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IN THE

Supreme Court of the United States

OCTOBER TERM 1971

No.

CHARLES G. JACQUES, JR.,

-v-

LOUISIANA STATE BAR ASSOCIATION

On Application for a Writ of Certiorari to the Supreme Court of Louisiana

---

PETITION FOR WRIT OF CERTIORARI

Mr. Guy Johnson
Pere Marquette Building
New Orleans, Louisiana 70112

TABLE OF CONTENTS - Page 1

	Page
Index of Authorities	i
The Opinion Below	1
Jurisdiction of this Court	1
The Questions Presented for Review	2
Constitutional Provisions and Statutes Involved	5
Statement of the Case	7
The Federal Questions Below	15
Reasons for Granting the Writ	20
Preamble	20
Point I - Vagueness of Article XIII, § 4 and Article XIV. Articles of Incorporation of the Louisiana State Bar Association	20
Point II- Ex Post Facto Application of Judicial Opinion Contravenes Due Process	27
Point III-No Evidence Supporting Specification Nos. 4 and 5. Disbarment thereon Violates Due Process of Law	33
Point IV- Liability for Another's Acts or Omissions; Imposition of Penal Sanctions Violates Due Process of Law	34

TABLE OF CONTENTS - Page 1

Page

Index of Authorities ---------- x

The Opinion Below ---------- 1

Jurisdiction of this Court ---------- 1

The Questions Presented for Review ---- 2

Constitutional Provisions and
Statutes Involved ---------- 3

Statement of the Case ---------- 7

The Federal Questions Below ---------- 1

Reasons for Granting the Writ ------- 2

Preamble ---------- 2

Point I - Vagueness of Article
XIII, § 4 and Article
XIV, Articles of Incor-
poration of the Louisiana
State Bar Association --

Point II- No Post Facto Application
of Judicial Opinion Con-
travenes Due Process ---

Point III-No Evidence Supporting
Specification Nos. 4 and
5, Disbarment Thereon
Violates Due Process of
Law ----------

Point IV- Liability for Another's
Acts or Omissions; Im-
position of Penal Sanc-
tions Violates Due Pro-
cess of Law ----------

TABLE OF CONTENTS - Page 2

	Page
Point V - Lack of Notice as to Reach of Investigation and Nature of Charges; Disbarment Violates Due Process of Law ----------	35
Conclusion ----------	41
Certificate ----------	44
Appendix:	
1. The Opinion Below (text) ------	45
2. Report of the Commissioner ----	65

INDEX OF AUTHORITIES - Page 1

	Page
Baird v. State Bar of Arizona, 401 U.S. 1 (1971)	23
Bouie v. City of Columbia, 378 U.S. 347 (1964)	17, 19,27,32,33,43
Calder v. Bull, 3 Dal. [3 U.S.] 386 (1798)	27
Calloway v. State, 7 Tex. App. 585 (1880)	28
Carnley v. Cochran, 369 U.S. 506 (1962)	40
Commonwealth v. Koczwara, 397 Pa. 575, 155 A.2d 825 (1959)	34
Cox v. Louisiana, 379 U.S. 536 (1965)	22,23
Giaccio v. Pennsylvania, 382 U.S. 399 (1966)	24
Glasser v. United States, 315 U.S. 60 (1942)	40
Gordon v. United States, 203 F.2d 248 (9 Cir. 1945)	34
Jaffee v. State, 76 Okla.Cr. 95, 134 P.2d 1027	35
Johnson v. State, 16 Tex. App. 410 (1884)	28
Johnson v. Zerbst, 304 U.S. 458 (1938)	40

INDEX OF AUTHORITIES - Page 2

	Page
Landry v. United States, 108 F.2d 698 (7 Cir. 1939)	28
Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154 (1971)	23
Louisiana State Bar Association v. Blum, 256 La. 530, 237 So.2d 366 (1970)	29,30
Louisiana State Bar Association v. Haylon, 250 La. 65, 198 So.2d 391 (1967)	30
Louisiana State Bar Association v. Klein, 253 La. 603, 218 So.2d 610 (1969)	30
Louisiana State Bar Association v. Mayeaux, 249 La. 7, 184 So.2d 537 (1966)	30,31
Louisiana State Bar Association v. Van Buskirk, 249 La. 781, 191 So.2d 497 (1966)	30
Novo, In re, 200 La. 833, 9 So.2d 201 (1942)	19,29
Ruffalo, In re, 391 U.S.544 (1968)	19,23, 25,34,36,38,39,40,41
Shuttleworth v. City of Birmingham, 382 U.S. 87 (1965)	22
Spevack v. Klein, 385 U.S. 511 (1967)	22
State v. Fourchy, 106 La. 750, 31 So. 325 (1902)	28

TABLE OF AUTHORITIES - Page 2

INDEX OF AUTHORITIES - Page 3

	Page
Stolar, In re, 401 U.S.23 (1971) -----	23
Terry v. United States, 131 F.2d 40 (8 Cir.) ----------	34
Thompson v. City of Louisville, 362 U.S. 199 (1960) ----------	34
United States v. Dietrich, 126 F3d. 676 (C.C.Neb.) ----------	34
Valesco v. State, 9 Tex. App. 77 (1880) ----------	28
Winters v. New York, 333 U.S. 507 (1948) ----------	23,24,25
Woody v. Superior Court, 87 Cal. Rptr. 210 (Cal.App. 1970) ----------	28

STATUTES AND CONSTITUTIONAL PROVISIONS RELIED UPON

UNITED STATES CONSTITUTION	
Article I, § 10, cl. i ----------	5
Amendment 14, § 1 ----------	5
UNITED STATES CODE	
28 U.S.C. § 1257(c)----------	2
LOUISIANA REVISED STATUTES OF 1950	
Title 37, § 211 ----------	7
Title 37, § 217 ----------	5,13,18,32
Title 37, Articles of Incorporation of the Louisiana State Bar Association Article XIII, § 4 --------	2,5,16,21 22,24,26,28

INDEX OF AUTHORITIES - Page 4

	Page
Article XIV	2,6,26
§ 11	6
§ 12	9,32
§ 14	9,10,32
RULES OF THE SUPREME COURT OF THE UNITED STATES	
Rule 23(1)(a)	1
Rule 23(1)(i)	1
RULES OF THE SUPREME COURT OF LOUISIANA	
Rule 16	7
MISCELLANEOUS REFERENCES	
7 C.J.S.. Attorney & Client, § 23	29

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PETITION FOR WRIT OF CERTIORARI

The Opinion Below

The opinion below is reported at ____ La. ____, ____ So. 2d ____ (1972). Rehearing was requested and refused. No opinion was given in support of this refusal. Refusal of rehearing is noted on page 20 of the slip opinion appended hereto pursuant to Rule 23(1)(a, i) of the Rules of this Honorable Court. The unreported Report of Commissioner is likewise appended hereto.

Jurisdiction of this Court

The Judgment sought to be reviewed herein was entered in the Louisiana Supreme Court on January 17, 1972.

A petition for rehearing was timely presented. Rehearing was refused on February 21, 1972.

On June 16, 1972, Mr. Justice Powell signed an Order extending the time for filing this petition until on or before July 20, 1972.

28 U.S.C. § 1257(c) confers jurisdiction on this Honorable Court to review the judgment of the Court below. Petitioner draws in question the validity of certain statutes of the State of Louisiana, both on their face and as applied in his case. Petitioner has asserted and been denied his rights under the United States Constitution by the Court below during the disbarment proceedings against him therein.

The Questions Presented for Review

1. Whether Article XIV (Canons of Ethics) of the Articles of Incorporation of the Louisiana State Bar Association, when considered in pari materia with Article XIII (Discipline and Disbarment), § 4 of the said Articles, is so unconstitutionally vague as to deny adequate notice of which violations of which canons are punishable in disciplinary proceedings against attorneys since Article XIV provides no standards by which an attorney can reasonably judge whether disbarment proceedings could be instituted against him under the provisions of Article XIII, § 4.

2. Whether the standard first enunciated in petitioner's case, that any violation of a Canon of Ethics subjects an attorney to disciplinary action, may constitutionally be applied against petitioner herein without inflicting upon him a punishment in

contravention of the Due Process Clause of the Constitution, since the retrospective judicial application of the new standards works substantially as an ex post facto law.

3. Whether the determination first made in petitioner's case that the withholding of a brother attorney's portion of a fee is a disbarment offense, when no law regulating the practice of law, no Canon of Ethics, or no prior Louisiana precedent has heretofore so held, may be applied with penal consequences against petitioner without violating the Constitutional proscription against ex post facto laws.

4. Whether there is evidential support in the record for the conclusion that petitioner misapplied a fee given for representation in a bankruptcy case to a previously existing debt owed him by the same client, which debt would have been discharged in the bankruptcy proceeding.

5. Whether there is evidential support in the record to show that petitioner was retained to represent C. L. Guidry in the divorce action filed against the said client by his wife.

6. Whether an attorney may be held liable and subjected to disbarment for acts done or omitted by another attorney.

7. Whether, in the presence of specific legislation and judicial precedent providing that the sanction against permitting a civil suit to prescribe is a civil action against the lawyer, the Louisiana Supreme Court may impose the penalty of disbarment under "standards" made and applied for the first time in petitioner's case.

8. Whether, with respect to Specification No. 7 which charges the commingling of a client's money with petitioner's own, petitioner had due notice when he was summoned to appear and answer the allegations of Specification No. 1 charging an ethical violation allegedly resulting from the failure to pay another attorney her portion of a fee in the same case but the Committee's investigation turned to an inquiry how the funds of the client were kept by petitioner pending distribution to the client and the Committee ordered petitioner to produce his bank account for examination under penalty for contempt should he fail, refuse or neglect to do so, and upon receipt and examination of the said account the seventh specification was lodged against petitioner.

9. Whether the Court below, having previously established or recognized the previously established rule that the commingling of a client's monies with an attorney's own would not amount to a disbarment offense unless the circumstances attending the transaction were demonstrative of bad faith or fraudulent purpose on the part of the attorney, may change the standard to a simple showing of the commingling of a client's funds with one's own and the allowance of the bank account to fall below the amount owed the client prior to but not at the time the client was due to be paid and apply that standard against petitioner in whose case the standard was first enunciated without violating the constitutional proscription against imposing ex post facto punishments.

Constitutional Provisions and Statutes Involved

United States Constitution:

Article I, § 10, cl. 1:

> No State Shall * * * pass any * * * ex post facto Law * * *.

Amendment XIV, § 1:

> * * * No State shall * * * deprive any person of life, liberty, or property, without due process of law.

Louisiana Revised Statutes of 1950:

Title 37, § 217 (R.S. 37:217):

> If a nonsuit is entered, owing to the absence or neglect of the attorney without a reasonable excuse, the costs shall be paid by the attorney and he shall be liable to pay all the damages which his client suffers by being non-suited or by any other neglect of the attorney, recoverable in a summary way, on motion after giving the accused notice.

Title 37, Articles of Incorporation of the Louisiana State Bar Association:

Article XIII, § 4:

> If, after investigation, a majority of the Committee shall be of the opinion that the member against whom the complaint has been made has probably been guilty of a violation of the laws of the State of Louisiana relating to the

professional conduct of lawyers and to the practice of law, or of a willful violation of any rule of professional ethics of sufficient gravity as to evidence a lack of moral fitness for the practice of law, it shall be the duty of the Committee to institute in the Supreme Court a suit for the disbarment or suspension of the accused member of the bar, and to designate one or more of their number to prosecute the same.

Article XIV (Canons of Ethics):

The following canons of ethics shall govern the professional conduct of the members of this Association. The enumeration of particular duties herein shall not be construed as a denial of the existence of others equally imperative, though not specifically mentioned.

CANONS OF ETHICS

* * * * *

11. Dealing with Trust Property.

The lawyer shall refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer shall be reported and accounted for promptly, and shall not under any circumstances be commingled with his own or be used by him.

* * * * *

Statement of the Case

Petitioner was disbarred, his name stricken from the roll of attorneys, and his license to practice law in the State of Louisiana was cancelled by the Supreme Court of Louisiana following proceedings conducted pursuant to the State statutes and rules of Court of the Supreme Court of Louisiana, and the Articles of Incorporation of the Louisiana State Bar Association which have the force and effect of law under the Rules and Orders of the Supreme Court of Louisiana and the authorizing enactment. R.S. 37:211. Rule 16, Rules of the Louisiana Supreme Court.

The State Bar, through its Committee on Ethics and Grievances (hereinafter referred to only as "the Committee"), formally charged petitioner in a six-specification accusation of professional misconduct amounting to the willful violation of professional ethics of sufficient gravity as to evidence a lack of moral fitness for the practice of law.

Charged in the six specifications were the following incidents, allegedly amounting to willful violations of the Canons of Professional Ethics then in force.

Specification No. I charged that petitioner had obtained a settlement in a Jones Act case and refused to divide the fee with co-counsel in the case. Also alleged, but disregarded throughout the proceedings below, was an accusation that petitioner had mishandled other cases submitted to him by co-counsel when co-counsel left the association between petitioner and her and joined the Staff of the United States Attorney in New Orleans. Absolutely no evidence of mishandling of the cases in the latter mentioned part

of the specification was adduced.

Both the Louisiana Supreme Court and the Commissioner appointed by it to conduct hearings on this matter and to report findings of fact and conclusions of law described petitioner's failure to divide the fee with co-counsel as "reprehensible to say the least." (R. I, Document XI, p. 11.) It may have been. But there is no law specifically relating to the professional conduct of attorneys or to the practice of law which deals with the subject of fee division among attorneys. No Canon of Ethics except No. 34 deals with the subject of fee division. That canon merely prohibits fee division with laymen and sets standards upon which fee division with other attorneys is to be based. Until the decision in the instant case, there was no judicial precedent that had changed the nature of the remedy and the sanctions against refusal to divide a fee with another attorney from that of a civil action to a disbarment matter.

The facts surrounding the transaction between petitioner and his co-counsel have been stated in Volume I of the Record below, Document X, pp. 1-4. Because they are not important to a decision in the instant case, the preceding reference is felt adequate to present the facts surrounding Specification No. 1.

Specifications Nos. 2 and 3 were dropped and are not before this Court as they were not before the Court below.

Specification No. 4 dealt with the refusal of petitioner, in the face of demand, to file bankruptcy proceedings for one R. F. Borja, Sr., who had paid only $240.00 of the

fee set by petitioner for the performance of this service. The bankruptcy proceedings would have discharged a debt owed petitioner. However, that did not cause petitioner to refuse to file the proceedings. Having had previous experience with the client's reluctance to pay him for his legal services rendered, petitioner frequently told the client that he would not file until the petitioner had paid him his required fee: $250.00 for the fee and $50.00 for costs of prosecution of the petition in bankruptcy. The client never paid; petitioner never filed.

No law regulating the practice of law or the conduct or attorneys requires that an attorney permit a client to set the fee by the device of promising to pay one thing, obligating the attorney to perform in spite of the failure to pay, and the client paying only what he desires for the service actually rendered. The only canons dealing with the subject of setting fees and the requirement to perform services for a client with relation to the set fee are Canons 12 and 14, which provide, respectively:

> Canon 12. Fixing the amount of the fee
>
> In fixing fees, lawyers shall avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. * * *
>
> In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the

> novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; * * * (3) the customary charges of the Bar for similar services; * * * (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.
>
> * * *
>
> Canon 14. Suing a client for a fee
>
> Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients shall be resorted to only to prevent injustice, imposition or fraud.

Petitioner's quotation of $250.00 plus costs was consistent with the Minimum Fee Schedule of the Louisiana State Bar Association. In fact, it is the minimum fee for representation in a bankruptcy action. Not only should petitioner not have to sue a client in order to get his rightful reasonable recompense for his services, the Canons frown upon such actions by the attorney. Petitioner was not obliged to act for Mr. Borja until Mr. Borja provided that recompense. Until then, there was no binding contract of employment but merely an offer of services for a specific amount paid in advance.

It was claimed by the Bar Association that petitioner had misapplied the $240.00 received on the bankruptcy fee to the prior existing debt owed petitioner by Mr. Borja. There is absolutely no evidence contained in the record of these proceedings to support that allegations.

Rather than a case representing a failure on the part of an attorney to look out for the interests of the client, this case clearly represents one where a hard-paying client attempted to get further legal services from petitioner, in which he would discharge the prior existing debt to petitioner, again without paying petitioner for the professional services rendered.

Except upon order of a Court, there is no legal duty for an attorney in Louisiana to represent a client without recompense. No Canon of Ethics requires it. No previous judicial construction of any law relating to the professional conduct of attorneys or the practice of law and no judicial construction of any of the Canons of Ethics require it. The disbarment of petitioner upon the ground of the Fourth Specification is based upon the after-the-fact determination of the Louisiana Supreme Court that petitioner was obligated to perform the requested but unpaid services. He is being punished with disbarment for failure to perform something which was not a legal duty at the time of the omitted act.

Specification No. 5 dealt with a charge that petitioner took money for services he did not render, to-wit: representation of one Carrol L. Guidry, in defense of a suit filed by the client's wife for a divorce.

The testimony adduced during the Committee hearing conclusively shows that petitioner was in no way involved with the matter of the divorce action. Mr. Guidry testified that he first went to petitioner with respect to the representation of his cause in defense of an action for separation a mensa et thoro filed by the client's wife. Petitioner turned the case over to an associate in his office, a Mr. Belin. (R. II, p. 131) That attorney handled the defense of the separation to the complete satisfaction of the client. (R. II, 131, 132-133) At the hearing, the Committee asked the following question with respect to the divorce representation and received the following answer from the client involved:

> Q. You considered Mr. Jacques or Mr. Belin the attorney representing you, which one?
>
> A. Well, his office was representing me and when I first went to see him it was Mr. Jacques and then he turned me over to Mr. Belin in his office. (R. II, p. 136)

The matter for which petitioner was initially consulted by the client was concluded by the withdrawal of the wife's suit for separation. The subsequent divorce suit was a completely new action. The attorney to whom the client had been first referred returned to petitioner's office but directly consulted Mr. Belin. It was that attorney's case, not petitioner's!

Specification No. 6 charged petitioner with accepting employment to file suit on behalf of a client and, without a reasonable excuse, permitting the suit to prescribe

with the resulting loss of a right of action by the client. The sanction against such negligence by an attorney is a civil action if the suit is dismissed because of prescription. LSA-R.S. 37:217. If suit is never filed, the remedy is an ordinary action in tort for malpractice. No law respecting the professional conduct of attorneys or the practice of law and no Canon of Professional Ethics prohibits the conduct here charged. No disbarment has ever occurred in the State of Louisiana for failure to institute legal proceedings on behalf of a client during the prescriptive period. The disbarment of petitioner upon the basis of the allegations in the Sixth Specification is based upon the after-the-fact determination of the Louisiana Supreme Court that disbarment will be a sanction for such acts of omissions by attorneys. Petitioner is therefore being punished with disbarment for failure to perform something for a client when the sanction against such misconduct at the time of the offense was not penal disbarment but a simple civil action or a summary procedure under State statute.

The statements made by the Commissioner in this report to the Supreme Court of Louisiana point up the constitutional defects to which petitioner made objection before the Louisiana Supreme Court respecting Specification No. 7. The Commissioner wrote (R. I, Document IV, pp. 11-12):

> By virtue of the testimony developed at the first meeting of the Committee on July 13, 1970, the Committee filed specification No. 7 which in effect contained the double charges that (1) the funds received by Respondent [petitioner herein] in the Booth case

> were commingled with his personal funds and (2) he converted a portion of these funds to his own personal use. The Committee subpoenaed that portion of Respondent's bank account at the Hibernia National Bank in New Orleans entitled "Charles G. Jacques, Jr., Attorney at Law" bearing No. 12-50-9486-4 from April 1969 through July 1970. The bank account was produced and was the principle [sic] subject of the second meeting of the Committee which was held on July 27, 1970. The bank account reflects the deposit by Respondent of $72,500.00 in his said account on April 24, 1969. The account also reflects that on November 19, 1969, which was prior to the disbursement of any funds to Mrs. Booth, the plaintiff in said proceedings[,] or to Miss Chauvin, his co-counsel in said proceedings, only the sum of $23,664.51 remained therein. Through successive deposits during the latter part of November and the early part of December Respondent built the account back up to $44,024.47 and on December 8, 1969, a check payable to Mrs. Booth in the sum of $40,833.33 was debited against the account. And on July 14, 1970, the day following the first meeting of the Committee, a certified check payable to Miss Chauvin in the sum of $10,000.00 representing the balance due on her share of the attorneys' fees, was debited to the account.

The foregoing statement of the manner by which the Committee obtained information against petitioner was pointed out to the Supreme Court of Louisiana in briefs opposing

petitioner's disbarment. (See R. I, Document VIII, pp. 12-14, and Document X, pp. 9-11.) Nevertheless, the Supreme Court of Louisiana treated the allegations of Specification No. 1 and Specification No. 7 as "so closely related * * * that for all intents and purposes they are one and the same." (R. I, Document XI, p. 17.) Specification No. 1 was related to Specification No. 7 only to the extent that it involved different aspects of petitioner's misconduct with respect to the handling of the same case. The issues charged, however, are in no wise similar. One charges the failure to pay co-counsel a fee; the other charges the commingling and conversion of a client's money.

THE FEDERAL QUESTIONS BELOW

The proceedings before the Louisiana Supreme Court were original in nature. There was no State appellate tribunal to review the judgment of the said Supreme Court. This Court does not require formal bills of exception. It only requires that the Court below have an adequate opportunity to consider a federal question when such a question is presented by a party objecting to the particular procedure of which complaint was made and review is sought herein. The Louisiana Supreme Court, in the opinion in this case, recognized that "in argument before (it, petitioner)may again raise the issue of whether he was denied due process." (R. I, Doc. XI, p. 16). On all the federal questions urged herein, the Louisiana Supreme Court had an opportunity presented to it, either directly or indirectly, to rule on the issues, and did rule thereon, in the following manner.

Petitioner asserted in brief and oral argument before the Louisiana Supreme Court

that the provisions of the Articles of Incorporation of the Louisiana State Bar Association were unconstitutionally vague and failed to provide an attorney due notice of which ethical violations would result in the penal liability of disbarment and which not. (R.I, Doc. VIII, pp. 8-12) Petitioner complained of the lack of standards in the Canons of Ethics for an attorney to determine which of them, if violated, would or could result in disbarment proceedings, for only the violation of professional ethics "of sufficient gravity as to evidence a lack of moral fitness for the practice of law" are punishable by disbarment. Article 13,§4, Art. of Inc. of the LSBA. No violation of a law regulating professional conduct or the practice of law and no conviction of a criminal offense--the only other bases under Louisiana law for disbarment of an attorney--were charged. The Louisiana Supreme Court disregarded the distinction made in the statute between violations of sufficient gravity and those of insufficient gravity, merging all ethical violations as a basis for disbarment, saying (R.I, Doc. XI, p. 16):

> Respondent contends that the standard of "moral fitness for the practice of law" is unconstitutionally vague. We disagree. The phrase means that one must conform to standards of character and conduct laid down by the profession. In other words, one must conform to the Canon[s] (now the Code of Professional Responsibility.) (Emphasis added.)

Nonconformance with any of the canons, under the above declaration, becomes for the first time in Louisiana a standard for an attorney to determine for what he may be disbarred

and what not.

By Petition for Rehearing, petitioner urged that the application of this standard to his case, the Court would impose an ex post facto punishment proscribed by the Federal Constitution. (R. I, Doc. XII, p. 2.) Anticipating the possible after-the-fact application of new standards in his case, petitioner cited the Court to this Court's opinion in Bouie v. City of Columbia, 378 U.S. 347 (1964), denouncing as an ex post facto application of law a definition of an offense made and applied in the same case by the South Carolina Supreme Court. The warning against the ex post facto application of new standards in petitioner's case was not even discussed in the opinion of the Court. No reasons were assigned for the refusal of rehearing.

Questions 4 and 5 relate to the quantum of proof, alleging a total absence thereof, and question the constitutional propriety of a disbarment without evidential foundation. Although this point was not specifically raised in the context of a federal question, it is respectfully submitted that judgments based upon unproven conclusions are the type federal questions which should be entertained without formal objection, especially when the case comes to this Court without the benefit of prior judicial review (The Louisiana Supreme Court decided the case under its original jurisdiction from which the only review obtainable is in this Honorable Court). Petitioner did assert in his Petition for Rehearing that the opinion of the Court was in error and deprived petitioner of his rights under the Federal Constitution.

Question 6 was raised by the defense presented to Specification No. 4, i.e., that

the associate in his office, Mr. Belin, was solely responsible for the handling of the divorce action. (See R. I, Doc. X, pp. 4-5.) Penal liability cannot attach to one who lacks responsibility for the acts done or omitted. This Court should notice the error alleged, especially since it is the type that would never arise except upon post-trial motions and appeal, from which there is only the discretionary remedy of rehearing in Louisiana disbarment matters and the discretionary remedy of certiorari in this Court. The assertion above mentioned that the Court's opinion was not in conformity with the evidence and opinions of this Honorable Court should be construed to have raised the Federal Question presented by Issue No. 6.

With respect to the Seventh question presented, the previous opinions of the Louisiana Supreme Court and R.S. 37:217 were pointed out to the Court below. Petitioner complained of the vagueness because of the absence of appropriate standards for the guidance of the profession in determining what conduct would subject them to the penal consequences of disbarment. That the enunciation of standards in this case and the application of those standards against petitioner would subject him to penal consequences for acts which were not subject to such punishment at the time of their omission or commission was pointed out to the Court below. Since there was no appellate remedy available to petitioner, the issue was not framed specifically in the manner it is now. Until a ruling had been made, there was no reason to assume the Court would enunciate and apply new standards to the former Canons of Ethics, making the violation of any of them punishable by disbarment.

Question No. 8 was squarely raised in brief and oral argument before the Louisiana Supreme Court. (R. I, Doc. VIII, pp. 12-14.) That question was timely presented. (See R. I, Doc. XI, p. 16.) The Court specifically ruled against petitioner on the ground that petitioner did not object to the addition of Specification No. 7 when the Bar Association amended the specifications to include it and distinguished this Court's opinion in In re Ruffalo, 391 U.S. 544 (1968), on that basis alone.

Again the previous standards enunciated in In re Novo, 200 La. 833, 9 So.2d 201, 208 (1942), by the Louisiana Supreme Court which required for a finding of sufficient violation of Canon No. 11 of the Canons of Ethics to warrant disbarment that there be shown the element that the attorney commingled the client's funds in bad faith or with a fraudulent purpose. At the time when the client was due to be paid, she was paid. The cases cited by the Court in support of petitioner's disbarment are inapplicable since the clients were not timely paid in those instances. The modification of the standards for the determination whether an attorney's act of depositing his clients funds with his business funds amounted to a disbarment offense and the application of those new standards to petitioner's acts previously committed did not need to be anticipated; the power of the Louisiana Supreme Court to construe State law was not contested. Bouie v. City of Columbia, supra, was pointed out to the Court below, indicating to that Court that the action ultimately taken would violate petitioner's rights under the Ex Post Facto Clause of the Constitution. On Petition for Rehearing, the fact that the Court's action had violated petitioner's rights against the ex post facto

application of its opinion to his prior conduct was pointed out the Court. (R.I, Document XII, p.2.) No reasons were assigned for the refusal to rehear this cause.

REASONS FOR GRANTING THE WRIT

PREAMBLE TO ARGUMENT

Although petitioner has framed the Questions Presented to include ten specific issues, the points of law may be reduced to six: (1) the vagueness and standardlessness of Louisiana's statutes describing disbarment offenses; (2) the ex post facto application of standards first enunciated in petitioner's case to conduct which previously occurred; (3) prejudice because of compulsory membership in the Louisiana State Bar Association; (4) the lack of evidence to support disbarment; (5) penal liability in circumstances where petitioner had no personal involvement; and (6) denial of the right of notice under the doctrine of In re Ruffalo, supra.

I

Article XIII, §4, Articles of Inc. of the LSBA, construed in pari materia with Article XIV thereof, is unconstitutionally vague for want of sufficient standards for an attorney to determine what ethical violations subject him to the penal consequences of disbarment.

Louisiana did not adopt the Code of Professional Responsibility as the standards of ethical conduct required of attorneys in Louisiana until _____, 1971. See Article 16, Articles of Incorporation of the

LSBA, as amended. The hearings conducted by the Committee on the seven specifications in this matter occurred on July 13, 1970 and July 27, 1970. The date of the last act alleged to have been committed by petitioner supposedly occurred in December of 1969. Some acts of omission are alleged to have continued until the date of the accusation, June 8, 1970. The Code of Professional Responsibility distinguishes between ethical violations which arise to the level of a disciplinary matter and those which are only the gentleman's rules of the profession. The former Canons of Ethics in effect at the time of the alleged conduct made no such distinction.

Article XIII, § 4, Articles of Inc., LSBA, provides all the standards that existed for an attorney to determine which offenses against the Canons of Ethics would subject him to disciplinary action. That Article, which has the force of law (see the statutes and Order of the Louisiana Supreme Court set forth in the previous part of this petition entitled "Constitutional and Statutory Provisions Involved" and Rule 16 of the Louisiana Supreme Court), provided three bases for disbarment: (1) "a violation of the laws of the State of Louisiana relating to the professional conduct of lawyers;" "a violation of the laws of the State of Louisiana relating to the practice of law;" and "a willful violation of any rule of professional ethics of sufficient gravity as to evidence a lack of moral fitness for the practice of law."

The laws relating to the professional conduct of lawyers and to the practice of law are set forth in R.S. 37: 211-218. None of these were alleged to have been violated by petitioner. Rather, it was alleged that

petitioner committed certain acts or omitted to perform certain obligations which amounted to the willful violation of the Canons of Ethics of sufficient gravity as to evidence a lack of moral fitness for the practice of law. (R.I, Document I, p.1, ¶III; Id., Specifications Nos. 1-7 appended thereto.)

To start with, Article XIII, §4 is unclear whether it is the Circumstances of the "violation" or the "rule of professional ethics" which is violated that must be of "sufficient gravity as to evidence a lack of moral fitness for the practice of law" (whatever this phrase means.)

Is one man who violates a particular Canon subject to disbarment and another not simply because the Bar Association and the Louisiana Supreme Court is of the opinion that one man's act reprehensible and the other's not? If that is the case, then the penal standards for the enforcement of the rules of professional ethics depend upon the "moment-to-moment considerations" of the holders of those offices. Cox v. Louisiana, 379 U.S. 536, 559 (1965) (separate opinion of Mr. Justice Black.) In Shuttlesworth v. City of Birmingham, 382 U.S. 87, (1965), this Court cited the quoted phrase from Cox for the principle that such a standard of enforcement of penal laws is arbitrary and that laws which permit such application are unconstitutionally vague. 382 U.S., at 90. Regulation of the conduct of lawyers under the sanction of penal consequences for failure of the lawyer to abide the regulations, just as the regulation of any other body of persons, must be by clearly defined laws. That is the import of Shuttlesworth and Cox when construed with the expression in Spevack v. Klein, 385 U.S. 511, 516 (1967), that

"Lawyers are not excepted" from the requirements that the State provide them due process of law. See, also, In re Ruffalo, supra, at 550 (1968); Baird v. State Bar of Arizona, 401 U.S. 1 (1971); In re Stolar, 401 U.S. 23 (1971); LSCRRC v. Wadmond, 401 U.S. 154 (1971).

Where the violation of a law imposes penal consequences, the people are entitled to know in advance what conduct is proscribed. Winters v. New York, 333 U.S. 507, 509-510 (1948); Cox v. Louisiana, 379 U.S. 536 (1965). If the provisions of Article XIII, §4 are construed to mean that it is the analysis of the circumstances surrounding the violation of the rule of professional ethics which determines whether the conduct is of "sufficient gravity as to evidence a lack of moral fitness for the practice of law," then people are daily being judged not on objective but the purely subjective and arbitrary standards of a group of large civil defense law firm members and Supreme Court Justices who are completely removed from the day-to-day conduct of a law practice dealing with people who are hard paying or who pose other problems for an attorney attempting to get his rightful reasonable recompense from them. This is not said to be critical of those who must make the judgment under the authorizing law but of the law which places them in the position of having to make these subjective judgments and which places the lawyers who must anticipate not only how the present members of the Committee on Ethics and Grievances and of the Louisiana Supreme Court bench will view their conduct but how unknown prospective members of those agencies will view it. The standardlessness inherent in a statutory scheme that permits one's competitors and judges, irrespective how conscientiously those persons attempt to apply the law, to determine whether

their offense against the prescribed professional ethics is of "sufficient gravity as to evidence a lack of moral fitness for the practice of law" violates the fundamental precept of notice and is unconstitutionally vague. See Giacco v. Pennsylvania, 382 U.S. 399, 402 (1966).

If Article XIII, §4 is to be construed to mean that the violation of some of the canons is "of sufficient gravity as to evidence a lack of moral fitness for the practice of law," per se, then the vice of vagueness appears twofold: The statute makes an implied distinction between those canons the violation of which amounts to "sufficient gravity" and those the violation of which does not, thereby lulling attorneys into a false sense of security that the canon violated is not "of sufficient gravity" when the Supreme Court of Louisiana, then or at some future time, might differ. A statute is unconstitutionally vague if men of reasonable intelligence must guess at its meaning and differ as to its application. Wiaten v. New York, supra, at 515-516. There are no standards written in the Canons of Ethics, as have now been written into the Code of Professional Responsibility, for an attorney to determine which are purely ethical considerations and which rules amount to punishable disciplinary considerations. The necessity of internal standards in a statute is well-established. In Giaccio v. Pennsylvania, supra, the Court dealt with a State statute which permitted a jury, upon acquitting a defendant, to assess costs against him. This Court "noted jurisdiction to consider the question raised concerning vagueness and absence of proper standards in the 1860 Act." 382 U.S., at 402. This Court, without dissent but with two Justices concurring on

other grounds, stated unequivocally in the following language that statutes which provide no standards for the application of penal sanctions suffer the vice of vagueness (ibid.):

> We agree with the trial court and the dissenting judges in the appellate courts below that the 1860 Act is invalid under the Due Process Clause because of vagueness and absence of any standards sufficient to enable defendants to protect themselves against arbitrary and discriminatory impositions of costs.

Until the promulgation of the present Article XVI of the Articles of Incorporation of the LSBA (the ABA Code of Professional Responsibility), the Canons suffered the same vice of vagueness as that condemned in Giaccio, supra: attorneys were unable to protect themselves against arbitrary and discriminatory disbarment because at the particular time the judges of the State Supreme Court felt the ethic violated to be "of sufficient gravity as to evidence a lack of moral fitness for the practice of law."

"The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement." Winters v. New York, supra, at 515. Unquestionably, the sanction for the enforcement of those canons of ethics from time to time thought to be "of sufficient gravity" as to require disciplinary action if they are violated is penal in nature. This Court, in In re Ruffalo, supra, at 550, unequivocally stated: "Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer." A statute

authorizing disbarment therefore imposes penal consequences. In order for the statute to be constitutionally viable, one must be able, without having to guess, to determine what conduct can result in that punishment. In Giaccio, supra, this Court stated (382 U.S., at 403-403):

> It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public [in this case, attorneys] uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not.

The vagueness of Article XII, §4, construed in pari materia with Article XIV, is not in what is stated in the Canons of Ethics (Article XIV) with respect to what an attorney should not do in the conduct of his practice as an attorney; the vagueness is in the lack of anything other than the subjective tests of the various individuals charged with their application in determining what is punishable and what not by the sanction of disbarment. The law prohibits the commission of torts against an individual. The sanction is a suit for recovery. Surely this Court would strike down a statute which provided for penal consequences in a Court exercising criminal jurisdiction were told it could imprison a person (or prevent him from holding property or any other thing) if it thought the tort, either because of the surrounding circumstances or because the particular judge felt that tort should never be committed, was "of sufficient gravity as to evidence" a social behavior. Attorneys are subject to

the same consideration with respect to the requirement that punishable offenses be specifically defined and the punishment be known to them. In Louisiana, no attorney can absolutely say which Canon, under what circumstances, will be determined to represent a disbarment offense. That is the vice of the statutes under which petitioner was disbarred.

STANDARDS ENUNCIATED FOR THE FIRST TIME IN THE INSTANT CASE WERE APPLIED AGAINST PETITIONER IN VIOLATION OF HIS RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION.

In Bouie v. City of Columbia, 378 U.S. 347, 353-354 (1964), this Court said:

> [A]n unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, such as Art. I, §10, of the Constitution forbids. *** If a state legislature is barred by the Ex Post Facto Clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction.

During the course of that statement, this Court reiterated the definition of an ex post facto law as it was first stated in Calder v. Bull, 3 Dal. (3 U.S.) 386, 390 (1798):

> [A law] ***"that aggravates a crime, or makes it greater than it was, when committed."

Even the Supreme Court of Louisiana has recognized the applicability of the Ex Post Facto Clause to the penal sanction of disbarment. See State v. Fourchy, 106 La. 750, 31 So. 325 (1902). In addition to the quoted definition of the Calder case, various courts have recognized that the diminution of the Government's burden of proof amounts to an ex post facto law if the burden required at the time of the commission of the alleged act is not applied against that conduct. Landay v. United States, 108 F. 2nd 698 (7 Cir. 1939), cert. den. 309 U.S. 681 (1940); Calloway v. State 7 Tex. App. 585 (1880); Johnson v. State, 16 Tex. App. 410 (1884); Valesco v. State, 9 Tex. App. 77 (1880). See, also, Woody v. Superior Court, 87 Col. Rptr. 210 (Col. App. 1970).

Both of these methods of violation of the Ex Post Facto and Due Process Clauses occurred in this case.

The penalty provision (i.e., Art. XIII, § 4. authorizing disbarment for a willful violation of a rule of professional ethics "of sufficient gravity as to evidence a lack of moral fitness for the practice of law") was charged to make any ethical violation a disbarment offense. (See R.I, Doc. No. II, p. 16.) At the cited reference, the Louisiana Supreme Court construed the phrase, "of sufficient gravity as to evidence a lack of moral fitness for the practice of law," to mean "that one must conform to standards of character and conduct laid down by the profession. In other words, one must conform to the Canon of Ethics (now the Code of Professional Responsibility)." This aggravated the disbarment offenses inexistence at the time of the alleged commission of the acts for which the Court below disbarred petitioner by making all

ethical violations disbarment offenses. It removed the necessity, where standards had been set by prior judicial precedent, from requiring proof of certain elements which, had petitioner been heard at the moment, would have been required to be proved. E.g., the law relating to commingling and conversion of a client's funds required the showing, in addition to the commingling and conversion that the funds were commingled in bad faith or with a fraudulent purpose. See In re Novo, 200 La. 833, 9 So. 2d 201 208 (1942), where it is said:

> The failure to account to a client for money collected for him or the appropriation to an attorney's own use of the funds that have been entrusted to him by his client, are among the most common grounds for the suspension or disbarment of an attorney, "provided the circumstances attending the transaction are such as to satisfy the Court that the attorney is acting in bad faith or with a fraudulent purpose."

See, also, 7 C. J. S., Attorney & Client, §23, p. 746, cited by the Court in the Novo case. Subsequent judicial action in disbarment cases cannot be construed to change the standards until the Court decided petitioner's case.

The Court below relied upon the following cases cited by the Commissioner as a basis for disbarring petitioner for commingling the Booth settlement (Specification No. 7) and using funds from the account in which it was deposited pending the final distribution thereof to the client. LSBA v.

Blum, 256 La. 530, 237 So. 2d 366 (1970); LSBA v. Klein, 253 La. 603, 218 So. 2d 610 (1969); LSBA v. Haylon, 250 La. 65198 So. 2d 391 (1967); LSBA v. Van Buskirk, 249 La. 781, 191 So. 2d 497 (1966); LSBA v. Mayeaux, 249 La. 7, 184 So. 2d 537 (1966).

Significantly, Blum was decided after the alleged commingling and conversion. Application of its standards would clearly violate the Due Process and Ex Post Facto Clauses under the teachings of the Bouie case, supra.

Klein involved instances where the attorney took from his client or from an attorney in settlement of his client's case monies which he deposited in his own account and never paid his clients until official pressure was brought either by threat of legal action or by the threat of disbarment proceedings. 218 So.2d at 611.

In Haylon, the attorney received monies from the sale of property pursuant to a Court-ordered partition and sale in a divorce suit. After expenses and fees were deducted, Haylon owed his client $2,742.00. After repeated demands, some through counsel from Pennsylvania, Haylon sent his client four checks, all of which were returned, marked "not sufficient funds." Finally, Haylon paid $1,000.00 but the remaining $1,742.00 had not been repaid at the time of the disbarment proceedings. 198 So. 2d at 392.

Van Buskirk similarly involved the collection of funds for a client which had not been remitted at the time of the disbarment proceedings. That attorney gave one NSF check purporting to pay his client. 198 So. 2d at 498.

Mayeux also involved the collection without remittance to the client, except by NSF checks, monies for the client. He did not pay his client until disbarment proceedings were instituted.

These cases all involve a failure to pay a client money due him. That was not the case here. Petitioner collected a judgment of $72,500,000, two-thirds of which were to go to the client. The client endorsed the check along with petitioner. Petitioner deposited the check in his Attorney's Account rather than in a trust account. The funds in that account fell below the amount owed the client. The record is silent as to other accounts of petitioner. But the significant distinction between the instant case and the cited cases is that the client was paid as soon as the succession was closed and the mother executed the forms necessary to protect the defendant in the civil suit from having the juvenile plaintiffs reopen the matter. Had petitioner fully paid the client at the moment he received the check and then for some reason or another the succession had not been approved and the juveniles reopened the case, there was no way petitioner could assure his adverse counsel that the money previously paid would or could have been returned. Certainly petitioner's acts to close the succession as soon as he did and to hold his brother attorney and his client harmless from the possible loss above described amounts to good-faith conduct on the part of petitioner. Fraudulent purpose is also negated by this. At the time when the client could safely be paid, she was paid. The client had no complaint. This complaint of commingling and conversion of a client's funds was purely a result of an investigation by the Committee conducted in violation of

petitioner's constitutional rights, (as more fully appears hereinbelow) and resulted from an ex proprio motu accusation following that unconstitutional investigation.

With respect to the failure to account to his co-counsel, it is reiterated that there was no law respecting the specific conduct of attorneys or the practice of law violated by petitioner. Nothing in the Canon of Ethics requires the prompt accounting to co-counsel. Louisiana provided only the tort remedy prior to the enunciation of the sanction of disbarment in this case. This clearly states new law and applies it to prior conduct in contravention of the principles of Bouie, supra.

Respecting the failure to file suit in the bankruptcy case (Specification No. 4) and the tort suit taken on a contingency basis (Specification No. 6), Louisiana provides a statutory remedy if suit is filed and non-suited because of prescription. R.S. 37:217. The Canons of Ethics recognize that it is the attorney's right, not the client's, to fix a fee, and that the attorney is rightfully entitled to reasonable recompense for his services. Canons Nos. 12 and 14. Requiring petitioner to file the bankruptcy claim before payment of the agreed fee, part of the agreement having been that the client would have to pay in advance, was nothing more than petitioner's means of demanding execution from his client of the client's part of the employment contract. Canon No. 14 makes it unethical in most cases for an attorney to sue his client. Petitioner used the only legal means available to him to enforce the client's performance of his obligations under the contract. The subsequent determination by the Court that this is

ground for disbarment attaches penal consequences for the first time to conduct which was not heretofore subject to that sanction. This works an ex post facto application of enunciated in petitioner's case in contravention of Bouie, supra.

PETITIONER'S DISBARMENT ON SPECIFICATION 4 AND 5, IN THE ABSENCE OF EVIDENTIAL SUPPORT VIOLATES FUNDAMENTAL CONCEPTS OF DUE PROCESS.

Part of the misconduct alleged in Specification No. 4 was that petitioner misapplied the money received from the client as a fee for filing a bankruptcy petition to an overdue account which would have been discharged in the bankruptcy proceedings. No evidence exists in this record to support this charge. Inherent in the allegation of Specification No. 5 is the allegation that petitioner was counsel for the client who made complaint. The record conclusively shows that petitioner was retained to represent the client in a separation suit and that suit was defended to the complete satisfaction of the client. (R.II, pp. 132-133.) The case was assigned to and defended by an associate in petitioner's office. (R. II, p.131.) The client returned to that attorney when his wife sued for a divorce. (R. II, pp. 133,136.) There is no evidence in this record to support the conclusion that in the divorce matter petitioner was the client's attorney.

There is no need for citation of authorities to make the statement that an attorney is entitled to a hearing before being disbarred. Inherent in this right is the right to have the factual issues resolved upon the basis of evidence produced at the hearing.

Since the Constitution prohibits conviction of a criminal defendant when there is no evidence to support the conviction, Thompson v. City of Louisville, 362, U.S. 199 (1960), and since disbarment proceedings are penal in nature, In re Ruffalo, supra, it is only logical and right that the total absence of evidence in support of an accusation should result in the finding that the person is not guilty of the thing of which he is accused. The right to a hearing is entirely meaningless unless the factual conclusion after the hearing is based upon evidence.

Discussion of the degree of proof required in disbarment proceedings need not be done in this case. There was not even the question of a preponderance of the evidence. There was no evidence to support the conclusion that petitioner misapplied the fee to the account of another obligation or that he was the attorney responsible for the defense of the divorce action. No disbarment on the basis of Specifications Nos. 4 or 5 is constitutionally permissible under the facts stated in the record herein.

PETITIONER CANNOT BE LIABLE IN DISBARMENT PROCEEDINGS FOR THE INDEPENDENT ACTS OF ANOTHER.

This proposition seems incapable of dispute. In a criminal prosecution, guilt is personal to the person who committed the act. See Gordon v. United States, 203 F. 2d 248 (9 Civ.), vac. 345 U.S. 968, rev'd on oth. grnds. 347 U.S. 909 (1945); Terry v. United States, 131 F. 2d. 40 (8 Civ.); United States v. Dietrich, 126 Fed. 676 (C.C.Neb.). Guilt must be determined by the independent activities of the accused. See Commonwealth v. Koczwara, 397 Pa. 575, 155 A.2d 825 (1959);

Jaffee v. State, 76 Okl. Cr. 95, 134 P.2d 1027. In a civil suit, no one who has not committed the tort is held liable unless there is some agency relationship. And a prior existing agency does not subject a person to perpetual responsibility for acts performed by a former agent after the cause and fact of the agency has ceased.

In the circumstances here presented, Mr. Belin and petitioner may have had an agency relationship when petitioner took the separation case and assigned it to Mr. Belin. Following the successful disposition of the case, however, the reason and fact of the agency ceased. When the client returned to the law offices jointly occupied and saw Mr. Belin, he was Mr. Belin's client. The failure to represent the client was that of Mr. Belin. No presently recognized method of assessing liability of persons in either criminal or civil proceedings can result in a finding of liability of petitioner for Mr. Belin's acts of omission. Since petitioner's disbarment on Specification No. 5 turns wholly upon the assessment of liability against him for the wholly independent acts of another, the judgment is violative of the most fundamental principles of due process.

THE ABSENCE OF FAIR NOTICE AS TO THE REACH OF THE COMMITTEE'S INVESTIGATION AND THE PRECISE NATURE OF THE CHARGES DEPRIVED PETITIONER OF DUE PROCESS.

In its findings of fact pursuant to the appointment by the Supreme Court of Louisiana, the Commissioner found that "During the Committee's hearing of July 13, 1970, additional information was developed regarding Specification No. 1 and the Committee

subsequently filed Specification No. 7 against Respondent [petitioner herein] * * *." (R. I, Doc. IV, p. 5) The Commissioner further stated, "Specification Nos. 1 and 7, involve the same subject matter * * *." Petitioner takes issue with the factual conclusion that the additional information which was developed at the Committee hearing related to Specification No. 1 and that Specification No. 7 involved the "same subject matter."

Petitioner respectfully submits that Specification No. 1 deals with his failure to divide a fee with co-counsel and his failure to handle other cases to the satisfaction of co-counsel, a former associate in his office. Nothing therein relates to commingling with his own funds and converting to his own use the monies due his client any more than the employment of the investigator, Orlando, had to do with the charges of soliciting FELA cases through Orlando in In re Ruffalo, 390 U.S. 544, reh. den. 391 U.S. 961 (1968).

Petitioner respectfully submits that with the exception of the fact that counsel for Ruffalo objected to the addition of the last specification, whereas petitioner did not, the Ruffalo case is on all fours with the instant case. The effect of the failure to object to the addition of the Seventh specification is pretermitted for the moment while petitioner proceeds to compare the fact situation in Ruffalo to his own case.

In Ruffalo, the Ohio Board of Commissioners on Grievances and Discipline originally filed a twelve-specification charge of professional misconduct against Ruffalo. Two specifications dealt with "soliciting."

Ruffalo defended on the ground that one Orlando, an employee of the railroad, did not solicit cases for him but merely investigated FELA cases for Ruffalo, some of which involved his regular employer. Following this disclosure, the Board amended the Specifications to cover a charge of unethical conduct in the hiring of a railroad employee to investigate claims against his regular employer. Ruffalo objected to the amendment of the specifications on the ground that he was not provided due notice. The Board denied the motion but granted a continuance of several months in order for Ruffalo to prepare to respond to the additional charge. Ruffalo had no notice at the time the hearing commenced that his employment of Orlando as an investigator would be considered at the discipline proceeding or that it would be considered to be a disbarment offense. This notice came only after the Board had obtained all of the material facts about the employment of Orlando in the first hearing.

In the instant case, the Committee filed a six-specification charge of professional misconduct against petitioner. The first specification dealt with the failure of petitioner to divide a fee with his co-counsel. During the course of the hearing, the Committee became curious how petitioner held the client's settlement pending distribution. Petitioner stated in his testimony that he had kept it it a special account, separate from his own money. The Committee, out of either disbelief or curiousity, ordered petitioner to produce his records relating to that account on or before the 16th day of July, 1970. Pursuant to the command of the Committee, petitioner produced the record of the account on July 16, 1970. Significantly, it was the following day that the Committee

amended the Specifications to include a charge of commingling and conversion of the client's monies. Ten days later, petitioner was summoned for further proceedings on this additional charge. The Louisiana Supreme Court acknowledged in its opinion that "[t]he bank account was produced and was the principal subject of the second meeting of the committee which was held on July 27, 1970." (R. I, Doc. XI, p. 9.) The bank account then being in the possession of the Committee, petitioner had no choice but to admit that he had not placed the client's settlement in a trust account and that he had allowed the account balance to drop below the amount due the client. All this was evident before the specification was even drawn. A mere inspection of the bank account, which had been subpoenaed at the first hearing, made this obvious.

In Ruffalo, this Court held that the bringing of additional charges out of the conduct discovered through evidence adduced from the defending lawyer violated the lawyer's right to due notice and to an opportunity to defend himself. This Court said (390 U.S.. at 551, 552):

> * * * The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.
>
> How the charge would have been met had it been originally included in those leveled against petitioner

by the Ohio Board of Commissioners on Grievances and Discipline no one knows.

This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process.

This same statement is applicable to the facts and circumstances of petitioner's case. In addition to the mere obtention of testimony from petitioner, the Committee obtained documentary material from him at the first hearing which even less afforded him the "opportunity to expunge the earlier statements and start afresh."

The only basis for distinction between this and the Ruffalo case which was suggested by the Supreme Court of Louisiana was petitioner's failure to object to the amendment of the specifications. (R. I, Doc. XI, p. 17.) It is respectfully submitted, however, that the notice required by the Ruffalo case is that which is calculated to inform a person of the nature of the inquiry "before the proceedings commence," not afterwards, when "[t]hey become a trap." After the proceedings are underway and the Committee obtains all the information needed to accuse and adjudge guilty the lawyer, the constitutional right to due notice has already been violated. An objection at this stage of proceedings cannot cure the defect which has already resulted. As noted by the Court in Ruffalo, it was not the second but the first proceeding in which notice was denied. This is concluded from the words of the opinion which indicate that one must know the reach of the grievance procedure and the precise nature of the charges before the

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proceedings commence so he may meet those charges without running the risk of falling prey to the trap of defending on a basis subsequently determined to be itself an offense.

As Ruffalo affirms that the right to due notice exists before the proceedings commence and that it is denied thereafter when the proceedings have become a trap for the unwary, and that such right is constitutionally based, it is difficult to see what difference the objection to the addition of the specification makes so as to distinguish this case from Ruffalo. This Court has often said that waiver of constitutional rights is not to be presumed from acquiescence in their violation and that in order for a waiver of constitutional rights to exist there must be an intentional relinquishment of a known right or privilege. Johnson v. Zerbst, 304 U.S. 458, 464 (1938). This Court has also said that waiver will not be presumed from a silent record. Carnley v. Cochran, 369 U.S. 506, 515 (1962). And this Court has refused to apply the doctrine of waiver by acquiescence to the right to counsel against a defendant who was himself a lawyer. Glasser v. United States, 315 U.S. 60, reh. den., 315 U.S. 827 (1942).

Since the violation of the rights enunciated in Ruffalo occurred before the amendment of the specifications and petitioner was not put on notice of the violation until the amendment, at a time when he "[could] then be given no opportunity to expunge the earlier [disclosure] and start afresh," it is respectfully submitted that the failure to object to the amendment did not reach the dignity of a waiver of constitutional rights but amounted only to an acquiescence in the

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violation of his rights from which no waiver can be concluded.

Disbarment on Specification No. 7 thus violated petitioner's right to due process of law guaranteed by the Fourteenth Amendment to the United States Constitution as exemplified in the opinion of this Court in In re Ruffalo, supra.

CONCLUSION

The Louisiana statute authorizing the institution of disbarment proceedings is unconstitutionally vague because of the absence of standards by which it may be objectively applied. Rather, the statute is subject to the moment-to-moment considerations of the officers charged with administering it as to whether certain conduct of a lawyer is "of sufficient gravity as to evidence a lack of moral fitness for the practice of law." The statement by the Louisiana Supreme Court that it, and not the Bar Association, disbars attorneys is of no avail to the Bar Association in this attack on the statute. First, the proceedings are instituted solely upon the authority of Article XIII, § 4, Articles of Incorporation of the Louisiana State Bar Association. Secondly, the Louisiana Supreme Court is bound to act within the terms of the statute to disbar an attorney since that statute is the only authority therefor. When the statute authorizing a prosecutor or grand jury to institute proceedings is unconstitutional, indictments or informations made upon its authority are void. The same principle applies to accusations of unethical conduct by lawyers whose right to earn a living in his profession is at stake. The Louisiana Supreme Court is not endowed with the ability to objectively administer the statute, without

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succumbing to the moment-to-moment considerations of its individual members, any more than is the Committee on Ethics and Grievances which is forced to elect whether or not to institute disbarment proceedings. The vagueness for want of standards by which to apply the statute renders disbarment proceedings instituted thereunder void.

The statute internally distinguishes between ethical violations for which disbarment proceedings may be instituted and those for which they may not, yet neither the statute, the statutes relating to the conduct of attorneys or to the practice of law, or the Code of Ethics make the distinction between ethical violations which arise to the stature of a disbarment offense and those which do not.

In Specifications numbered 1, 6 and 7, there had either been no previously enunciated standards by which an attorney could determine if the ethical violations involved were of sufficient gravity as to evidence a lack of moral fitness for the practice of law or the standards which had existed under the jurisprudence at the time of the alleged commission of the acts did not include the conduct alleged by the Bar Association to be a disbarment offense. For the first time, the Supreme Court of Louisiana stated that the violation of any of the Canons of Ethics could result in disbarment, notwithstanding the clearly implied distinction in the statute between ethical violations of sufficient gravity as to warrant disbarment and those not of such gravity. The Court below not only enunciated new standards not predictable from the words of the statute but it applied those standards against petitioner and imposed penal consequences for conduct occurring before the

enunciated standards in the same manner as an ex post facto law would operate. This Court has decided that Courts may no more do that than a State Legislature may. Bouie v. City of Columbia, supra. Petitioner's disbarment in such a manner violated his right not to be deprived of his property without due process of law.

The Court below held petitioner responsible and liable to disbarment for acts done by another person over which petitioner had neither the legal nor moral duty, or even the power, to control. The representation of the client in the divorce case, after the successful conclusion of the separation proceedings by dismissal of the suit, was the sole responsibility of the attorney to whom the client came when the new proceedings were instituted. That was not petitioner but one Mr. Belin. Disbarment for failure to represent that client is a total violation of the most fundamental concepts of due process. Why have hearings in which constitutional rights must be accorded if at the conclusion thereof a person may be disbarred in spite of his lack of culpability? That happened here!

And finally, the Committee alleged six counts of professional misconduct against petitioner and on the basis of disclosures compelled from petitioner at the hearing thereon, without any notice of the scope of inquiry or precise nature of the investigation by the Bar Association, it instituted ex proprio motu accusations of additional misconduct.

All of the above indicate that the judgment of the Louisiana Supreme Court so flagrantly deviated from the standards of due

process, as stated in the Amendments to the Constitution and the decisions of this Honorable Court, as to call for the exercise of the discretion of this Court to review upon its writ of certiorari the judgment below.

For the above and foregoing reasons, this Court should grant petitioner's application for a Writ of Certiorari to the Supreme Court of Louisiana, commanding it to certify the record in this cause and to transmit the same hereto for review upon the federal questions presented and, after review of the assigned errors, the judgment of the Court below ordering the disbarment of petitioner should be reversed and the proceedings dismissed.

Respectfully submitted,

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Telephone: [504] 821-5331

CERTIFICATE

I certify that I have this _____ day of July, 1972, served a copy of the foregoing Petition for a Writ of Certiorari to the Supreme Court of Louisiana upon counsel for the Louisiana State Bar Association by delivering a copy thereof to and leaving the same with a member of the office staff of the Louisiana State Bar Association at Suite 101, Supreme Court of Louisiana Building, 301 Loyola Avenue, New Orleans, Louisiana.

MILTON P. MASINTER
Attorney at Law

MONDAY JAN 17 1972

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SUPREME COURT OF LOUISIANA

No. 50979

LOUISIANA STATE BAR ASSOCIATION

SUPREME COURT OF LOUISIANA
A TRUE COPY
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DEPUTY CLERK

Versus

CHARLES G. JACQUES, JR.

DISBARMENT PROCEEDING

DIXON, Justice

The Louisiana State Bar Association, through its Committee on Professional Ethics and Grievances, instituted these proceedings against Charles G. Jacques, Jr., a member of the Louisiana Bar practicing in New Orleans, alleging that the committee had conducted a full investigation of certain alleged misconduct on the part of respondent. After a full hearing in accordance with Rule XVI of this court and Article XIII of the articles of incorporation of the Louisiana State Bar Association of 1941 (now Article XV), the committee was unanimously of the opinion that the respondent had been guilty of violations of ethical standards of sufficient gravity to warrant disciplinary action and to evidence a lack of moral fitness for the practice of law.

We agree with the findings of fact and law of the Commissioner and paraphrase in extenso his statement of the case.

As provided by the rules of this court, notices were given to respondent in communications addressed to him under date of June 8, 1970 of six specifications and under date of July 17, 1970 of one additional specification. Hearings were held on specifications Nos. 1 through 6 on July 13, 1970 and on specification No. 7 on July 27, 1970. The committee unanimously concluded that the respondent was guilty of misconduct as set forth in five of the seven specifications. (The complaining witnesses in specifications 2 and 3 did not wish to pursue their complaints). The committee then filed these proceedings, and prayed that the court appoint a commissioner to take the evidence and, in due course, report to this court his findings of fact and conclusions of law and that, ultimately the respondent be suspended from the practice of law and his name stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be canceled for a period deemed appropriate by this court. Respondent was personally served with said petition for disbarment on November 10, 1970 but failed to answer thereto. On December 16, 1970, on motion by the committee, this court appointed Albert J. Flettrich as Commissioner to take evidence and report his findings of fact and conclusions of law.

After due notice, a hearing was held by the Commissioner on March 10, 1971. On the morning of the hearing, respondent filed an answer to the committee's petition for disbarment, the contents of which will be considered in connection with the discussion of each

individual specification.

Specifications Nos. 1 and 7, involved the same subject matter and will be considered together following the comments regarding spec ifications 2 through 6.

Specification No. 2 originated in a letter written by Frank W. White addressed to Mr. Thomas O. Collins, Jr., counsel for the committee, dated January 13, 1970, wherein Mr. White alleged that respondent had allowed prescription to run against the claim of his (White's) wife and two daughters for personal injuries and property damage resulting from an automobile accident on August 9, 1968. However, by letter dated July 1, 1970 Mr. White informed Mr. Collins that his reporting this complaint to the Louisiana State Bar Association was the result of a misunderstanding between him and his wife and respondent. In this letter Mr. White requested the committee to drop "the entire matter." As a result of said letter, the committee withdrew specification No. 2.

Specification No. 3 originated in a letter addressed to Mr. Tom Collins and members of the Louisiana State Bar Association by Thomas McCain Day which was received by the bar association on February 20, 1970 wherein Mr. Day alleged that respondent was supposed to be representing him in two cases, one of which had been pending three and one-half years and the other one and one-half years. Complainant contended that he was seldom able to contact respondent and when he did respondent's favorite trick was

telling him to call back in a couple of weeks and he would have his cases settled and then it was usually four to six weeks before he could talk to him again. Complainant requested the help of the bar association. However, on July 7, 1970 the complainant addressed a letter to the bar association stating that he wished to withdraw his complaint against respondent and that he was completely satisfied. Because of the complainant's refusal to appear and testify, the committee was unable to pursue the charges further.

Specification No. 4 originated by virtue of a letter addressed to Mr. Thomas Collins of the Louisiana State Bar Association by Rudolph F. Borja, Sr., dated March 24, 1970 wherein complainant stated that on September 29, 1969 he paid respondent $240.00 to file bankruptcy proceedings on his behalf. Although complainant signed all of the papers necessary, the bankruptcy proceedings were never filed despite repeated efforts and requests by the complainant to respondent to do so. It was brought out during the hearing that respondent did without justification attempt to apply this sum to fees allegedly due for other services. Subsequent to the hearing before the committee on July 13, 1970 respondent did refund complainant's payment of $240.00.

Specification No. 5 originated in a letter addressed by Carrol L. Guidry to Mr. Thomas Collins of the Louisiana State Bar Association dated April 2, 1970 wherein he alleged that the first time he went to see

respondent was in September of 1968 for the purpose of obtaining a separation from his wife. At that time complainant paid respondent $200.00 for which complainant states respondent wrote a couple of letters and made a couple of telephone calls to Slidell and Covington, Louisiana. Then in October, 1968 complainant's wife filed a petition for divorce in Covington, Louisiana at which time respondent charged complainant an additional $200.00 for handling the defense of his wife's divorce action. Complainant charged that respondent did not represent him when the case came up for hearing and he had to get another lawyer. He stated that he called respondent's office many times but was never able to contact him nor did respondent return his telephone calls. Respondent in his answer filed in this record on the morning of the hearing before the Commissioner (on March 10, 1971) in response to specification No. 5 alleged that he returned the sum of $200.00 to Mr. Guidry, despite the pleadings filed and work done. It was not until March 9, 1971, the day before the hearing before the Commissioner, that respondent drew his check No. 168 to Carrol L. Guidry for $200.00 in return of the fee paid to him in connection with the defense of his wife's divorce action.

Specification No. 6 originated by virtue of a letter addressed by Floyd Montgomery to Mr. Thomas O. Collins, Jr. of the Louisiana State Bar Association dated May 5, 1970 wherein complainant alleged that on January 5, 1965 a suit was filed by him (Floyd Montgomery) and Joseph

Smith against the Shieldstone Laboratory Company. Complainant's attorney was Mr. Charles G. Jacques, Jr., respondent herein. The complainant alleged that respondent had him taking treatments for a long time but during the past year he was unable to contact respondent, nor would respondent write him or return his telephone calls, in other words, after five years he alleged that respondent refused to discuss his case. During the hearing before the Commissioner some questions arose as to whether or not this case had prescribed by virtue of the fact that a petition had not been filed within one year of the date of the accident or whether or not the case had prescribed for lack of prosecution within five years of the date of filing. Respondent stated that the case had definitely not been filed. In his answer to specification No. 6, respondent alleged "that Montgomery was paid and a full release secured from him through his attorney." During the hearing before the Commissioner it developed that complainant had not been paid nor a release secured as of that time. Respondent testified that he had negotiated a settlement with Mr. E. Howard McCaleb III, attorney for Floyd Montgomery; that he agreed to compromise and settle the Montgomery claim for $500.00 and on March 9, 1971, the day before the Commissioner's hearing, he drew his check No. 167 for $500.00 to Floyd Montgomery and Howard McCaleb, III, his attorney, and forwarded it together with a receipt and release to Mr. McCaleb by letter dated March 9, 1971.

Specifications Nos. 1 and 7 were the most serious of the charges brought by the committee against respondent. These specifications originated when the committee received a letter from Joan Elaine Chauvin dated December 29, 1969. She had been formerly associated with respondent in the practice of law, and when she joined the staff of United States Attorney in New Orleans she turned over to respondent all of her open and pending cases under an agreement whereby she would receive one-half of any fees collected, less costs. One of the cases turned over by her to respondent was a Jones Act case entitled Booth et als v. Chotin, Inc., No. 1834 of the United States District Court for the Eastern District of Louisiana. Miss Chauvin charged that on April 22, 1969 respondent received from Phelps, Dunbar, Marks, Claverie & Sims a check for $72,500.00 in settlement of this case. The Booths were originally clients of Miss Chauvin and when the cause of action arose she agreed with Mrs. Booth that she would handle the case on a contingent fee of one-third of the amount recovered. She then prepared and filed the petition in the United States District Court. Respondent, through negotiation with Mr. Charles E. Dunbar III, of the firm of Phelps, Dunbar, Marks, Claverie & Sims, compromised and settled the claim, as stated above on April 22, 1969, for $72,500.00. The check for $72,500.00 was deposited by respondent in his checking account, entitled "Charles G. Jacques, Jr., Attorney at Law" bearing No. 12-50-9486-4, in the Hibernia National

Bank in New Orleans on April 24, 1969.

At the time of the settlement, Mr. Dunbar testified that he went to respondent's office and met with him and his client, Mrs. Booth and other members of her family. At the time the check was given to respondent, Mrs. Booth executed a full release and also agreed to hold defendants harmless against any claim which might be later made by the minors, if any such claims were ever presented. It was Mr. Dunbar's understanding with respondent that out of an abundance of caution a succession would be opened and Mrs. Booth would be qualified as administratrix of her minors' estates and at that time she would execute another release. However, Mr. Dunbar testified that it was not a condition of the settlement that the $72,500.00 check not be negotiated. It was not until December 8, 1969 that respondent finally paid Mrs. Booth the amount due her as her share of the claim, $40,833.33 ($48,333.33 less $7,500.00 previously paid). And it was not until immediately after the first hearing before the committee on July 13, 1970 that respondent finally settled with Miss Chauvin for her portion of the attorneys' fees.

The committee filed specification No. 7 on July 17, 1970, which in effect charged that (1) the funds received by respondent in the Booth case were commingled with his personal funds and (2) he converted a portion of these funds to his own personal use. The committee subpoenaed that portion of respondent's bank account at

the Hibernia National Bank in New Orleans from April, 1969 through July, 1970. The bank account was produced and was the principal subject of the second meeting of the committee which was held on July 27, 1970. The bank account reflects the deposit by respondent of $72,500.00 in his said account on April 24, 1969. The account also reflects that on November 19, 1969, which was prior to the disbursement of any funds to Mrs. Booth or to Miss Chauvin, only the sum of $23,664.51 remained therein. Through successive deposits during the latter part of November and the early part of December, respondent built the account back up to $44,024.57 and on December 8, 1969 a check payable to Mrs. Booth in the sum of $40,833.33 was debited against the account. And on July 14, 1970, the day following the first meeting of the committee, a certified check payable to Miss Chauvin in the sum of $10,000.00, representing the balance due on her share of the attorneys' fees, was debited to the account.

At the first meeting of the committee on July 13, 1970 respondent testified that he had not expended any of the funds derived through the Booth settlement except $7,500.00 which he had advanced to Mrs. Booth. During the second hearing on July 27, 1970, after being confronted with his bank statement and Mr. Dunbar's testimony, respondent was asked if he still stood on that statement to which question respondent replied "no sir I do not." Respondent admitted he had lied because he was "scared

and frightened and panicked."

Respondent tried to explain his delay in disbursing the proceeds of the Booth settlement by stating that he was waiting until the final releases were obtained through the succession proceedings in Covington. The Commissioner thought, however, this explanation of no avail to him because he had no explanation or justification for only having $23,664.51 left in his bank account on November 19, 1969, at which time he still owed Mrs. Booth $40,833.33 and Miss Chauvin $12,000.00, her one-half of the fee. At that moment, he owed his client and fellow attorney a total of $52,833.33 and only $23,664.51 remained in his checking account.

Article 14 § 11 of the articles of incorporation of the Louisiana State Bar Association provides:

> "The lawyer shall refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> "Money of the client or collected for the client or other trust property coming into the possession of the lawyer shall be reported and accounted for promptly, and shall not under any circumstances be commingled with his own or be used by him."

The article is applicable here.

The Commissioner found that the respondent did not seriously dispute any of the allegations. He noted in his delayed answer to the committee's petition that respondent attempted to exculpate himself by either saying that the complainants were paid or had withdrawn their charges.

However, the Commissioner believed, because of the facts and circumstances surrounding the payments or withdrawal of charges by the various complainants, that either the payments or the withdrawal of the charges occurred only because of proceedings brought by the bar association.

The Commissioner believed that the respondent had violated his professional duty and displayed a lack of professional integrity by his continued failure to respond to his clients' efforts to contact him, by his permitting cases to prescribe, by commingling his clients' funds with his own funds and by converting his clients' funds to his own personal use, all of which was detrimental to the integrity of the legal profession and required disciplinary action.

The Commissioner noted that the respondent could not in any way justify his use of his client's funds. From August 1 to November 19, the only money in respondent's account belonged to his client; on November 19, when she was due over $40,000.00, there was only $23,664.51 in the bank. Furthermore, his delay in accounting to his fellow attorney for her share of the attorneys' fees was reprehensible to say the least. It was noted that the settlement with his co-counsel was only made the day after the first committee hearing was held. The Commissioner was convinced that restitution and settlement by respondent with his clients and co-counsel was only made under the pressure of the disbarment proceedings.

The Commissioner cited and discussed six cases of this court to reach a conclusion: Louisiana State Bar Association v. Blum, 256 La. 530, 237 So. 2d 366; Louisiana State Bar Association v. Klein, 253 La. 603, 218 So. 2d 610; Louisiana State Bar Association v. Haylon, 250 La. 651, 198 So. 2d 391; Louisiana State Bar Association v. Van Buskirk, 249 La. 781, 191 So. 2d 497; Louisiana State Bar Association v. Mayeux, 249 La. 7, 184 So. 2d 537; and Louisiana State Bar Association v. Powell, 248 La. 237, 178 So. 2d 235.

These cases abundantly support the Commissioner's conclusion that respondent's conduct requires disciplinary action.

Respondent contends that Article 13 § 4 and Article 14 § 11 of the articles of incorporation of the Louisiana State Bar Association are unconstitutionally vague and over broad when construed either separately or together. That is, he contends that the articles provide that if a majority of the ethics and grievance committee is of the opinion that an attorney has probably been guilty of a violation of the laws relating to the professional conduct of attorneys and the practice of law or that the attorney has probably been guilty of a willful violation of a rule of professional ethics of sufficient gravity as to evidence a lack of moral fitness for the practice of law, the committee may institute a suit for disbarment or suspension and that same does not lay down sufficient standards as to what constitutes a violation.

There is no merit to this contention. The Committee on Professional Ethics and Grievances is empowered by law to hold hearings upon alleged misconduct. Article 13 § 2, Louisiana State Bar Association articles of incorporation. That article places the responsibility of investigating all complaints looking to the suspension and disbarment of an attorney in the Committee on Professional Ethics and Grievances. '(T)he committee may designate one or more of its members to take testimony and examine witnesses on behalf of the committee." If it concludes that there may be misconduct, it petitions this court to appoint a commissioner, hold a hearing, etc. The committee cannot disbar any member. Only this court has original jurisdiction to hear such matters under the Louisiana Constitution Article 7 § 10. The committee serves a quasi-judicial function. It receives evidence and allows the accused attorney a chance to be heard, to cross-examine witnesses, to call witnesses in his own defense, etc. Respondent has not at any stage of the proceedings pointed out wherein he was deprived of any constitutional right under the United States or Louisiana Constitutions, nor in what manner his rights were prejudiced. Respondent never once objected to the proceedings against him. Respondent could have adduced any evidence necessary for his defense. He was informed of his rights in the letters by the committee to him advising him of the hearings on the specifications.[1]

[1]The letters to Mr. Jacques advising him of the committee hearings read, in pertinent part, as follows:

We note that at the hearings before the Committee on Professional Ethics and Grievances and the commissioner appointed by this court that the respondent was advised of his right to have counsel present and that respondent voluntarily waived his right.

Respondent relies on the case of In re Novo, 200 La. 833, 9 So. 2d 201 for the proposition that there are no standards by which respondent can gauge his conduct. We disagree. This court found (in Novo) that the evidence indicated a legitimate dispute as to the computation of the fee which negated an intent to improperly commingle and convert. Under specification No. 7 in the case before us there was no fee dispute between respondent and his client whose funds he did commingle and convert. The transcript reflects that the respondent did not have a legitimate fee dispute with his co-counsel, Miss Chauvin. He admitted to the committee that he lied, that he did owe Miss Chauvin her one-half fee ($12,000.00) and that he refused to pay her. Besides, Article 14 of the Louisiana State Bar Association articles of incorporation laysdown clear standards of conduct by which an attorney can gauge his conduct.

"Under the rules, you are hereby given a full opportunity to defend yourself before this Committee by introducing evidence and by cross-examining witnesses against you, and you have the right to be represented by counsel. You also have the right to compel the production of any books, records, documents or other evidence that may be relevant to this matter under investigation. The Committee will subpoena any witnesses selected by you and will also issue any writs of subpoena duces tecum you may desire which are pertinent.

. . . .

Respondent complains that the Commissioner erred in admitting into evidence the transcript of the hearings held by the committee on July 13, 1970 and July 17, 1970.

The transcript was made a part of the petition by the committee when it filed the petition in this court. It is a well settled rule of this court that the transcript of the evidence taken at the hearings before the Committee on Professional Ethics and Grievances is admissible. Louisiana State Bar Association v. Sackett, 231 La. 655, 92 So. 2d 571; Louisiana State Bar Association v. Richard, 237 La. 530, 111 So. 2d 761. Pursuant to our rules, the respondent in the case before us was advised of his right to counsel, that all witnesses were subject to cross-examination, that he had the right to call witnesses in his own defense, and that he had the right to object to the introduction of any evidence offered. And at the hearing held by the Commissioner, the respondent again was offered the opportunity to introduce any evidence that he might not have introduced at the hearing before the committee, and produce any witnesses in his own behalf. There is no denial of due process.

Respondent complains that he cannot be disbarred on probability only and that such violates his right to due process. Respondent misreads the rules of this court. The Committee on

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"Please send immediately to the undersigned at 101 Supreme Cour Building, 301 Loyola Avenue, New Orleans, Louisiana 70112, the names and addresses of any witnesses you desire subpocnaed or a full description of any matters which you desire placed under writ of subpoena duces tecum."

COPY PRINTED CLOSE TO EDGE

Professional Ethics and Grievances cannot disbar. All it does is find facts and decide whether there is a probability that an attorney has willfully violated the ethical code laid down by the profession. In a sense, it performs the same function as a grand jury. Only this court may disbar an attorney. And it does so only after appointing a commissioner to take evidence, make findings of fact and law and state his conclusions therefrom. The commissioner receives the evidence under rules affording the attorney his due process rights. Thereafter, the commissioner files his report with this court. And in argument before this court, the respondent may again raise the issue of whether he was denied due process.

Respondent contends that the standard of "moral fitness for the practice of law" is unconstitutionally vague. We disagree. The phrase means that one must conform to standards of character and conduct laid down by the profession. In other words, one must conform to the Canon of Ethics (now the Code of Professional Responsibility).

Respondent contends that he was not given adequate notice of the charges against him to be able to properly defend himself. He alleges this especially with respect to specification No. 7. He claims that he only had ten days to prepare a defense.

In support of his position, respondent cites the case of In re Ruffalo, 391 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117. In Ruffalo, on the third day of a hearing before the Ohio Board of Commissioners involving twelve counts of alleged

misconduct, the board added a thirteenth charge based solely on testimony of Ruffalo and his investigator given during the hearing on the twelve charges. Counsel for Ruffalo objected to the addition of the thirteenth charge. No further hearings or evidence was taken on the thirteenth charge, although the commission gave the respondent additional time to reply.

Respondent in the case before us never objected to the introduction of the seventh specification. He was allowed the right to testify and explain why he was not guilty of the charge. Instead, he admitted that he had lied to the committee at its hearing on July 13, 1970 about related specification No. 1. Respondent never objected to specification No. 7 at his hearing before the Commissioner held March 10, 1971. The Ruffalo case is not applicable.

We note upon examining the record of the committee hearing on July 27, 1970 that respondent never complained of inadequate time to prepare a defense. He was an attorney. He could have asked the committee for more time. But he chose to proceed. He could have raised the same issue before the Commissioner. He cannot now complain. Even if respondent had complained, there would be no merit to his contention because we find that specification No. 7 is so closely related with specification No. 1 that for all intents and purposes they are one and the same.

It is a well settled principle that a disbarment proceeding is not so much for the punishment of the attorney as it is for the preservation of the integrity of the courts and

the salutary effect it has upon other members of the bar. In re Novo, supra; Louisiana State Bar Association v. Blum, supra. See also Louisiana State Bar Association v. Cox, 252 La. 978, 215 So. 2d 513; Louisiana State Bar Association v. Powell, supra; Louisiana State Bar Association v. Wheeler, 243 La. 618, 145 So. 2d 774; Louisiana State Bar Association v. Haack, 243 La. 1108, 150 So. 2d 32; In re Craven, 204 La. 486, 15 So. 2d 861.

This court has consistently held that absent mitigating circumstances, the commingling of the client's funds with those of the attorney and converting them to the attorney's own use constitutes misconduct sufficient to warrant disbarment. Louisiana State Bar Association v. Blum, supra; Louisiana State Bar Association v. Klein, supra; Louisiana State Bar Association v. Haylon, supra; Louisiana State Bar Association v. Mayeux, supra. The record discloses that there have been thirty-seven complaints against respondent since 1959 (for which respondent received six reprimands) plus the seven specifications here presented. This shows a course of conduct sufficient to warrant disbarment.

The Committee on Professional Ethics and Grievances prayed in its petition as follows:

> "WHEREFORE, petitioner prays that Respondent be ordered to plead or answer within fifteen (15) days from the date of service of a copy of this petition, and after issue joined, that the Court appoint a Commissioner to take the evidence, and, in due course,

> report to this Honorable Court his findings of fact and conclusions of law, and that, ultimately the Respondent be suspended from the practice of law, and that the name of Charles G. Jacques, Jr., Respondent, be stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be cancelled for a period deemed appropriate by this Court."

Respondent contends that since the petition of the committee only prays for suspension, then this court is without power to disbar.

We disagree with respondent's interpretation of the prayer. The petition prays that the respondent's name "be stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be cancelled for a period deemed appropriate by this Court." (Emphasis added). We also note that the petition is entitled "PETITION FOR DISBARMENT." It would require a strained interpretation to hold that the prayer and petition do not seek disbarment of respondent.

There is no difference between a prayer for suspension and a prayer for disbarment as to the requirements of due process. Respondent knew the charges against him. There is no reason to suppose that he would have defended himself with any more vigor had the prayer of the petition been phrased differently.

The fact that respondent had had a total of thirty-seven complaints of misconduct investigated by the bar association against him since 1959, exclusive of the

seven before us, should be considered in the disposition of this case. The fact that respondent has repaid all parties who questioned his conduct after a hearing before the Committee on Professional Ethics and Grievances does not show that he was in good faith when the complaints arose.

Respondent has violated specific canons. He has misappropriated his clients' funds. His admission before the committee demonstrates that he has great difficulty in telling the truth, and should not be trusted. His misconduct is habitual and of long standing. His continued practice of law would be an intolerable burden to the profession, its disciplinary committee, and the public. Disbarment is an appropriate remedy.

For the reasons assigned, it is ordered, adjudged and decreed that the name of Charles G. Jacques, Jr., respondent herein, be stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be revoked and the same is hereby canceled.

SUPREME COURT OF LOUISIANA
A TRUE COPY
MAR 18 1970
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SUPREME COURT OF LOUISIANA
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SUPREME COURT

STATE OF LOUISIANA

SUPREME COURT OF LOUISIANA
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NO. 50,979

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LOUISIANA STATE BAR ASSOCIATION

vs.

CHARLES G. JACQUES, JR.

---ooOoo---

REPORT OF COMMISSIONER

---ooOoo---

SUPREME COURT OF LOUISIANA
A TRUE COPY
MAR 3 1972
DEPUTY CLERK

ALBERT J. FLETTRICH, COMMISSIONER
818 Gravier Street
New Orleans, Louisiana 70112

LOUISIANA STATE BAR ASSOCIATION	*	SUPREME COURT
	*	
VS		STATE OF LOUISIANA
	*	
CHARLES G. JACQUES, JR.	*	NO. 50,979

* * *

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF LOUISIANA:

The Louisiana State Bar Association, through its Committee on Professional Ethics and Grievances, instituted these proceedings against Charles G. Jacques, Jr., a member of the Louisiana Bar practicing in New Orleans, alleging that the Committee had conducted a full investigation of certain alleged misconduct on the part of Respondent, and after full hearings had, in accordance with the Rules of this Honorable Court, the Committee was unanimously of the opinion that the Respondent had been guilty of violations of the laws of the State of Louisiana of sufficient gravity to warrant disciplinary action and that he had been guilty of such willful violations of the Rules of Professional Ethics as to evidence on his part a lack of moral fitness for the practice of law.

As provided by the Rules of this Honorable Court, notices were given to Respondent in communications addressed to him under date of June 8, 1970, consisting of six specifications and under date of July 17, 1970, consisting of one additional specification. Hearings were held on specifications 1 through 6 on July 13, 1970, and on specification No. 7 on July 27, 1970, and the Committee unanimously concluded that except as to specification No. 2, the Respondent was guilty of

misconduct as set forth in said specifications. The Committee then filed these proceedings for disbarment and prayed that after issue was joined, the Court appoint a Commissioner to take the evidence and, in due course, report to this Honorable Court his findings of fact and conclusions of law and that, ultimately the Respondent be suspended from the practice of law and his name stricken from the Roll of Attorneys and his license to practice law in the State of Louisiana be cancelled for a period deemed appropriate by this Court. Respondent was personally served with said Petition for Disbarment on November 10, 1970, but failed to answer thereto and on December 16, 1970, on motion by the Committee, this Court appointed the undersigned Commissioner to continue with these proceedings.

After due notice, a hearing was held by the Commissioner on March 10, 1971. On the morning of the hearing, Respondent filed an Answer to the Committee's Petition for Disbarment, the contents of which will be considered in connection with the discussion of each individual specification.

The specifications against the Respondent as found by the Committee are as follows:

> Specification No. 1:
>
> Miss Joan Elaine Chauvin an Attorney at Law upon assuming her duties as an Assistant United States Attorney turned over to you all her open and pending cases inasmuch as she had been associated with you on other matters prior to that time. In this connection and specifically in the case of Booth v. Chotin, Inc., U.S. D.C. No. 8134, you obtained a settlement sometime in the spring of 1969 and in connection therewith

received a check in the sum of $72,500.00. Attorneys' fees of $24,166.67 were received by you as a result of this settlement. In December of 1969, Joan Chauvin requested the payment of her one-half fee less the cost of $100 as agreed upon when she turned these files over to you. Further since 1967 you have failed, refused and neglected to complete many other files turned over to you by Joan Chauvin and have refused to make an accounting to her concerning these matters. Your conduct in this matter has caused Joan Chauvin to file a complaint with this Committee and you have in connection with the Committee's investigation, failed, refused and neglected to answer its correspondence.

Specification No. 2:

In August of 1968 you accepted employment as attorney for Frank W. White to represent him in his claims in property damages in connection with an automobile accident. Despite this client's repeated requests and efforts, you failed, refused and neglected to take any action in this matter and in fact, allowed the matter to prescribe to the detriment of this client. Your conduct in this matter has caused this client to file with this Committee a written complaint and in connection with its investigation thereof, you have failed, refused and neglected to answer the correspondence of this Committee.

Specification No. 3:

Some 3 years ago you accepted employment as attorney for Thomas McCain Day to represent him in two matters. To date you have failed, refused and neglected to perform the services for which you were employed. Additionally, you have refused to maintain communications with this client except to continually misrepresent the true status of his cases. The conduct herein has caused this client to file a complaint with the Committee and you have failed, refused and neglected to reply to this Committee's correspondence in connection therewith.

Specification No. 4:

In September of 1969 you accepted employment as attorney for Mr. R. F. Borja, Sr. Specifically you agreed to file bankruptcy proceedings on behalf of this client and in connection therewith received the sum of $240. Despite repeated efforts and requests of this client, you have failed, refused and neglected to date to perform the services for which you have been paid. Your procrastination and failure to act in this matter has caused your client undue and unnecessary financial distress. In this connection your client has filed with this Committee a written complaint concerning this matter and you have to date failed, refused and neglected to answer the Committee's correspondence sent to you by it in pursuing this investigation.

Specification No. 5:

In September of 1968 you received the sum of $200 to represent Carrol L. Guidry in a suit for separation from his wife. In that instance you did not file any pleadings on behalf of this client. In October of 1968 this client's wife filed for divorce in Covington, Louisiana and you received another $200 from this client to represent him in this matter. Although this matter has come up on the trial docket, you have failed, refused and neglected to contact the client or to represent him at the indicated time. To date you have failed, refused and neglected to return to this client the $400 in question for which you have performed no services. The complainant has filed with this Committee a written complaint and you have failed, refused and neglected to date to reply to this Committee's communications inconnection with this matter.

Specification No. 6:

In 1965 you accepted employment to represent Floyd Montgomery in his suit against the Shieldstone Laboratory Company. Despite many attempts by this client, you have failed, refused and neglected to communicate with him concerning this matter and have failed to take steps necessary to properly represent him. The complainant has

filed with this Committee a written complaint and you have failed, refused and neglected to reply to the Committee's communications in connection therewith.

During the Committee's hearing of July 13, 1970, additional information was developed regarding specification No. 1 and the Committee subsequently filed specification No. 7 against Respondent which is as follows:

> That as attorney for Mrs. Elaine Booth in the matter of Rudolph R. Booth vs. Berwick Bay Towing Company Et Al you did receive in trust and tentative settlement on April 22, 1969 the sum of $72,500 represented by a check from Phelps, Dunbar, Marks, Claverie & Sims dated April 22, 1969 payable to the order to Hazel Elaine Booth and Charles G. Jacques, Jr., her attorney. Mrs. Booth did endorse this check and you did thereafter deposit same in your account with the Hibernia National Bank in New Orleans on April 24, 1969. Disbursements were not made in this matter until December 8, 1969 at which time you paid to Mrs. Booth the sum of $40,833.33. As the record will reflect between your receiving the check on April 24, 1969 until final disbursement on December 8, 1969, you did commingle these funds with your own and convert a portion thereof to your use so that on November 19, 1969 there was in this account only the total sum of $23,664.51. On said date of November 19, 1969 out of the $72,500 there was due to Mrs. Booth $48,333.33 which indicates on that date that you had converted to your personal use no less than $24,668.82. Additionally referring to Specification No. 1 you had likewise converted to your own use the sum of $12,083.33 which was due as part fee to Miss Joan Elaine Chauvin your co-attorney in this matter.

Specification Nos. 1 and 7, involve the same subject matter and will be considered together following

the comments regarding specifications 2 through 6.

Specification No. 2 originated in a letter written by Frank W. White addressed to Mr. Thomas O. Collins, Jr., Counsel for the Committee, dated January 13, 1970, wherein Mr. White alleged that Respondent had allowed prescription to run against the claim of his (White's) wife and two daughters for personal injuries and property damage resulting from an automobile accident on August 9, 1968. However, by letter dated July 1, 1970, Mr. White informed Mr. Collins that his reporting this complaint to the Louisiana State Bar Association was the result of a misunderstanding between him and his wife and Respondent. In this letter Mr. White requested the Committee to drop "the entire matter". As a result of said letter, the Committee withdrew specification No. 2.

Specification No. 3 originated in a letter addressed to Mr. Tom Collins and members of the Louisiana State Bar Association by Thomas McCain Day which was received by the Bar Association on February 20, 1970, wherein Mr. Day alleged that Respondent was suppose to be representing him in two cases, one of which had been pending 3½ years and the other 1½ years. Complainant contended that he was seldom able to contact Respondent and when he did, Respondent's favorite trick was telling him to call back in a couple of weeks and he would have his cases settled and then it was usually 4 to 6 weeks before he could talk to him again. Complainant requested the help of the Bar Association. However, on July 7, 1970, the complainant addressed a letter to the Bar Association stating that he wished

to withdraw his complaint against Respondent and that he was completely satisfied. Because of the complainant's refusal to appear and testify, the Committee was unable to pursue these charges further.

Specification No. 4 originated by virtue of a letter addressed to Mr. Thomas Collins of the Louisiana State Bar Association by Rudolph F. Borja, Sr., dated March 24, 1970, wherein complainant stated that on September 29, 1969, he paid Respondent $240.00 to file bankruptcy proceedings on his behalf. Although complainant signed all of the necessary papers, the bankruptcy proceedings were never filed despite repeated efforts and requests by the complainant to Respondent to do so. It was brought out during the hearing that Respondent did without justification attempt to apply this sum to fees allegedly due for other services. Subsequent to the hearing before the Committee on July 13, 1970, Respondent did refund complainant's payment of $240.00.

Specification No. 5 originated in a letter addressed by Carrol L. Guidry to Mr. Thomas Collins of the Louisiana State Bar Association dated April 2, 1970, wherein he alleged that the first time he went to see Respondent was in September of 1968 for the purpose of obtaining a separation from his wife. At that time complainant paid Respondent $200.00 for which complainant states Respondent wrote a couple of letters and made a couple of telephone calls to Slidell and Covington, Louisiana. Then in October, 1968, complainant's wife filed a Petition for Divorce in

Covington, Louisiana at which time Respondent charged complainant an additional $200.00 for handling the defense of his wife's divorce action. Complainant charged that Respondent did not represent him when the case came up for hearing and he had to get another lawyer. He stated that he called Respondent's office many times but was never able to contact him nor did Respondent return his telephone calls. Respondent in his Answer filed in this record on the morning of the hearing before the Commissioner namely, on March 10, 1971, in response to specification No. 5, Respondent alleged that he returned the sum of $200.00 to Mr. Guidry, despite the pleadings filed and work done. As a matter of fact, it was not until March 9th, 1971, the day before the hearing before the Commissionor, that Respondent drew his check No. 168 to Carroll L. Guidry for $200.00 in return of the fee paid to him in connection with the defense of his wife's divorce action. The Commissioner files and makes part of this record a photostat copy of said check.

Specification No. 6 originated by virtue of a letter addressed by Floyd Montgomery to Mr. Thomas O. Collins, Jr., of the Louisiana State Bar Association dated May 5, 1970, wherein complainant alleged that on January 5, 1965, a suit was filed by him (Floyd Montgomery) and Joseph Smith against the Shieldstone Laboratory Company. Complainant's attorney was Mr. Charles G. Jacques, Jr., Respondent herein. The complainant alleged that Respondent had him taking treatments for a long time but during the past year he was unable to contract Respondent, nor would Respondent

write him, or return his telephone calls; in other words, after five years he alleged that Respondent refused to discuss his case. During the hearing before the Commissioner some questions arose as to whether or not this case had prescribed by virtue of the fact that a Petition had not been filed within one year of the date of the accident or whether or not the case had prescribed for lack of prosecution within five years of the date of filing. Respondent stated that the case had definitely not been filed (Comm'r Tr. Pg. 60). In his Answer to specification No. 6, Respondent alleged "that Montgomery was paid and a full release secured from him through his attorney." During the hearing before the Commissioner it developed that complainant had not been paid nor a release secured as of that time. Respondent testified that he had negotiated a settlement with Mr. E. Howard McCalab, III, attorney for Floyd Montgomery wherein he agreed to compromise and settle the Montgomery claim for $500.00 and on March 9, 1971, the day before the Commissioner's hearing, he drew his check No. 167 for $500.00 to Floyd Montgomery and Howard McCalab III, his attorney and forwarded it together with a Receipt and Release to Mr. McCalab by letter dated March 9, 1971. Respondent furnished the Commissioner with photostat copies of said check and letter together with a duplicate Receipt and Release signed and acknowledged by the complainant on March 10, 1971, which the Commissioner makes part of the record.

Specification Nos. 1 and 7 are by far the most serious of the charges brought by the Committee against Respondent. These specifications originated when the

Committee received a letter from Joan Elaine Chauvin dated December 29, 1969, at which time Miss Chauvin was an assistant United States Attorney. She had been formerly associated with Respondent in the practice of law and when she joined the staff of United States Attorney in New Orleans she turned over to Respondent all of her open and pending cases under an agreement whereby she would receive one-half of any fees collected thereon less costs. One of the cases turned over by her to Respondent was a Jones Act case entitled Booth et als v. Chotin, Inc., No. 1834 of the United States District Court for the Eastern District of Louisiana. Miss Chauvin charged that on April 22, 1969, Respondent received from Phelps, Dunbar, Marks, Claverie & Sims a check for $72,500.00 in settlement of this case. The Booths were originally clients of Miss Chauvin and when the cause of action arose she agreed with Mrs. Booth that she would handle the case on a contingent fee of 1/3rd of the amount recovered. She then prepared and filed the Petition in the United States District Court. Respondent, through negotiation with Mr. Charles E. Dunbar, III, of the firm of Phelps, Dunbar, Marks, Claverie & Sims compromised and settled the claim, as stated above on April 22, 1969, for $72,500.00. This check for $72,500.00 was deposited by Respondent in his checking account bearing No. 12-50-9486-4 in the Hibernia National Bank in New Orleans on April 24, 1969.

At the time of the settlement, Mr. Dunbar testified before the Committee at the hearing on July 27, 1970, that he went to Respondent's office and met with him and

his client, Mrs. Booth who was present with other members of her family and at the time the check was given to Respondent, Mrs. Booth executed a full release and also agreed to hold defendants harmless against any claim which may be later made by the minors, if any such claims were ever presented. It was Mr. Dunbar's understanding with Respondent that out of a super abundance of caution, a succession would be opended and Mrs. Booth would be qualified as Administratrix of her minors' estates and at that time she would execute another release. However, Mr. Dunbar testified that it was not a condition of the settlement that the $72,500.00 check not be negotiated. It was not until December 8, 1969, that Respondent finally paid Mrs. Booth the amount due her as her share of the claim namely $40,833.33 ($48,333.33 less $7,500.00 previously paid). And it was not until immediately after the first hearing before the Committee on July 13, 1970, that Respondent finally settled with Miss Chauvin for her portion of the attorneys' fees.

By virtue of the testimony developed at the first meeting of the Committee on July 13, 1970, the Committee filed specification No. 7 which in effect contained the double charges that (1) the funds received by Respondent in the Booth case were commingled with his personal funds and (2) he converted a portion of these funds to his own personal use. The Committee subpoenaed that portion of Respondent's bank account at the Hibernia National Bank in New Orleans entitled "Charles G. Jacques, Jr., Attorney at Law" bearing No. 12-50-9486-4 from April 1969 through July 1970. The bank account was produced and was the principle sub-

ject of the second meeting of the Committee which was held on July 27, 1970. The bank account reflects the deposit by Respondent of $72,500.00 in his said account on April 24, 1969. The account also reflects that on November 19, 1969, which was prior to the disbursement of any funds to Mrs. Booth, the plaintiff in said proceedings or to Miss Chauvin, his co-counsel in said proceedings, only the sum of $23,664.51 remained therein. Through successive deposits during the latter part of November and the early part of December Respondent built the account back up to $44,024.57 and on December 8, 1969, a check payable to Mrs. Booth in the sum of $40,833.33 was debited against the account. And on July 14, 1970, the day following the first meeting of the Committee, a certified check payable to Miss Chauvin in the sum of $10,000.00 representing the balance due on her share of the attorneys' fees, was debited to the account.

At the first meeting of the Committee on July 13, 1970, Respondent testified that he had not expended any of the funds derived through the Booth settlement except $7,500 00 which he had advanced to Mrs. Booth. During the second hearing on July 27, 1970, after being confronted with his bank statement and Mr. Dunbar's testimony, Respondent was asked if he still stood on that statement to which question Respondent replied "no sir I do not." When asked why did he lie to this Committee, Respondent replied that he was "scared and frightened and panicked". (Tr., Committee hearing, 7/27/70 P. 30).

Defendant tried to explain his delay in disbursing the proceeds of the Booth settlement by stating that he was waiting until the final releases were obtained through the succession proceedings in Covington. However, this explanation is of no avail to him because he has no explanation or justification for only having $23,664.51 left in his bank account on November 19, 1969, at which time he still owed Mrs. Booth $40,833.33, being the balance of her 2/3rds share of the amount collected, and he owed Miss Chauvin $12,000.00 being her one-half of the 1/3rd contingent attorney's fee. In other words, at that moment, he owed his client and fellow attorney a total of $52,833.33 whereas only $23,664.51 remained in his checking account.

In addition to the aforesaid specifications, the Commissioner notes on Page 81 of the transcript of the second Committee hearing on July 27, 1970, that 37 complaints against Respondent had been lodged with this Committee.

The Respondent does not seriously dispute any of the foregoing allegations. In his delayed Answer to the Committee's Petition, Respondent attempts to exculpate himself by either saying that the complainants were paid or had withdrawn the charges. However, the Commissioner believes by virtue of the facts and circumstances surrounding the payments and/or withdrawal of charges by the various complainants that either the payments or the withdrawal of the charges occurred only after pressure was brought upon Respondent by the

Bar Association or either immediately prior to or simultaneous with the Committee's and Commissioner's hearings. In other words, the Commissioner believes that restitution was made by the Respondent only because of the charges which were made against him the Committee and the pressure brought upon him, and it is only a matter of speculation whether or not restitution would have ever been made to the complainants had not these charges been brought.

The Commissioner believes that the Respondent has violated his professional duty and displayed a lack of professional integrity by his continued failure to respond to his clients' efforts to contact him, by his permitting cases to prescribe, by commingling his clients' funds with his own funds and by converting his clients' funds to his own personal use, all of which is most detrimental to the integrity of the legal profession and which conduct requires disciplinary action.

Respondent does not seriously dispute any of the foregoing fact. His argument to the effect that he was holding back on the payment of the amount due his clients out of the proceeds of the Booth settlement can not justify his commingling of the proceeds of said settlement which his own funds and the conversion thereof to his own use. Furthermore, his delay in accounting to his fellow attorney for her share of the attorneys' fees in said settlement is reprehensible and it is noted that the settlement with said attorney was only made after the charges were filed against him by the Committee and the day after the first Committee hearing

was held. As a matter of fact, in reviewing the other specifications, the Commissioner is convinced that restitution and settlement by Respondent with his respected clients and co-counsel was only made under the pressure of these disbarment proceedings.

CONCLUSIONS OF LAW

This Court has taken a firm stand against members of the Bar who have been charged with commingling their client's funds with their own funds and converting same to their own personal use.

In the case of Louisiana State Bar Association v. Blum, 256 La. 530, 237 So. 2d 366 (1970) the Respondent converted a portion of the proceeds of the sales price of a piece of property to his own use when he failed to disburse said funds to Eureka Homestead Society in satisfaction of a mortgage bearing against the property and which involved a number of other instances whereby the Respondent commingled his client's funds with his own funds and converted same to his own use. In this case the Court in considering the proper disciplinary action to be taken against the Respondent observed that the purpose of disciplining a practicing attorney is not intended as a punishment, but rather for the protection of the public against the misconduct and illegal action of members of the Bar as well as protection of the integrity of the legal profession. And the Court observed that although the record supports Respondent's contention that he had made restitution in connection with a number of the specifi-

cations against him, the records shows that this was only done after the complaints were filed with our grievance committee and pressure brought upon the Respondent to make such restitution. The Court concluded that the Respondent was guilty of ethical and profession misconduct of such gravity as to evidence his total lack of moral fitness for the practice of law and ordered his disbarment.

In the case of State Bar Association v. Klein, 253 La. 603, 218 So. 2d 610 (1969) a similar situation was involved as that which existed in the Blum case, except the funds of the client which was used by the Respondent in the Klein case were minimal, this Court found that in each specification the Respondent had commingled his client's funds with his own and converted them to his own use and in each instance it was only after the intervention of the Committee that he made restitution. In the Klein case this Court observed that "because of their professional status, attorneys must adhere to a high standard of conduct in relation with their clients. The conversion of a client's funds to personal use is one of the most serious violations of an attorney's obligation. The record reflected a pattern of un-professional conduct extending over a period of several years. There were no extenuating circumstances. Although Respondent had made restitution in most of the cas in which he misused his clients' funds, he did so only after the intervention of the Committee on Professional Ethics or after the threat of legal action. The Court concluded that disbarment was the only appropriate disposition.

The case of Louisiana State Bar Association v. Haylon, 250 La. 651, 198 So. 2d, 391 (1967) involved another incident whereby a member of the Bar retained monies belonging to his client, commingled same with his own funds and used the money to pay his personal obligations. In this instance the Respondent misappropriated $2,742.00 of his client's money of which he made restitution in part. His excuse was that he had placed the money in a separate bank account then withdrew it and gave it to his wife to hold but she used the money to pay a hospital bill incurred by her. Thereafter he set aside certain monies hoping to accumulate sufficient funds to remit the balance due on his obligation but, before he could do so, a large portion of these savings was seized by the Federal Government. These excuses, the Court observed, while no doubt true, provide at most tenuous support for mitigation of Respondent's unethical conduct. In ordering the Respondent's disbarment in this case the Court held that the misappropration by an attorney of funds collected for his client is such a serious breach of trust that it would be contrary to the public interest to allow the offender to continue in the practice of law. High standards of honesty and righteousness have been erected for these engaged in the legal profession and all members of it are required to take an oath to uphold these ideals of exemplary conduct upon their admission to the Bar. Hence, the violator of the trust of his clients must expect disbarment. Suspension does not vouchsafe the protection to which the public is entitled. Numerous cases are cited by the Court in this

Haylon case to support disbarment.

In the case of Louisiana State Bar Association v. Van Buskirk, 249 La. 781, 191 So. 2d 497 (1966) the Respondent accepted employment with a Texas law firm to collect a promissory note. Respondent collected approximately $600.00 from the debtor in settlement of the note. Despite repeated demand from the forwarding attorneys, Respondent failed to remit the sum collected and had not done so at the time of the Commissioner's hearing. Again during 1962, a client retained Respondent to collect an overdue account. Following collection, Respondent sent the client his check for $269.74 which the bank refused to honor because of insufficient funds on deposit. As of the date of the Commissioner's hearing in this proceeding, the Respondent had not yet accounted to his client. Although in this case only approximately $800.00 or $900.00 was involved, the Court observed that because of their professional status, attorneys must adhere to a high standard of conduct in relations with their clients. The conversion of a client's funds is one of the most serious violations of an attorney's obligations. For the protection of the Courts and the public, the Court concluded that Respondent must be disbarred.

In the case of Louisiana State Bar Association v. Mayeux, 249 La. 7, 184 So. 2d 537 (1966) this Court adopted the Commissioner's findings to the effect that Respondent was guilty of failure to faithfully and honestly discharge his professional and legal duty to report, account for and remit the monies of his clients;

that he issued various N.S.F. checks; failed to pay the salary of his law office employees; that he converted the property of his clients, commingling money of his clients with his own and used the funds for his own purposes. The Commissioner recommended that Respondent be disbarred and the Committee on Professional Ethics and Grievances concurred in the report. In this case this Court cited the canon governing the position of trust which an attorney occupies in relation to his client which canon is, in part, to the effect:

> "The lawyer shall refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> Money of the client or collected for the client or other trust property coming into the possession of the lawyer shall be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him." Articles of Incorporation of Louisiana State Bar Association, art. 14, Section 11.

Also pertinent to this case, is the following citation from 7 C.J.S. Attorney and Client, Section 25, as follows:

> "Payment or application of the amount due or withheld, when made by the attorney after the proceedings for disbarment have been commenced, or are about to be instituted, does not operate to relieve one from the liability already incurred, and the court may still proceed to disbar him. A fortiori, a mere intent, or offer to make restitution, or a tender of the money withheld, constitutes no defense."

> Such conduct may be considered by the court with other facts in determining whether the over all pattern of conduct of the attorney is such that disciplinary action is proper.

At this point, it is noted that the Committee observed, as stated above, that the Respondent in the present case has been involved in numerous complaints (at least 37 complaints) filed with the Committee on Professional Ethics and Grievances (Tr. hearing July 27, 1970, Pg. 81) although all of these complaints were not necessarily made part of the formal specifications which were filed against this Respondent.

Quoting again from the Mayeux case, this Court said:

> "The court ordered Respondent's disbarment despite the fact that nominal amounts of client's funds were commingled with the attorney's personal funds and converted to his own personal use."

On the other hand, in the case of Louisiana State Bar Association v. Powell, 248 La. 237, 178 So. 2d, 235 (1965) this Court considered the fact that the offense for which the Respondent was charged was his first offense in many years of honorable practice and at the time he committed the act charged, he was under a mental and emotional strain because of business difficulties and distress over the condition over a mentally retarded child. The defendant "threw himself upon the mercy of the Court" made full restitution and assured the Court it

would never again be called upon the entertain similar charges against him or any other charge of professional misconduct. Remembering, that these proceedings only involved one charge against the Respondent, the Court was impressed with the sincerity with which he frankly admitted the plight in which he found himself that resulted in the action forming the basis of this proceeding and the sincerity with which he stated he has learned his lession and will never again be brought before us on any charge or professional misconduct. Under these circumstances, the Court suspended the Respondent for 2 years.

CONCLUSION

The evidence establishes without question that Respondent Jacques was substantially guilty of the charges and specifications brought against him and although he made restitution, said restitution on his part was only made after these charges were brought against him by the Committee on Professional Ethics and Grievances and as a matter of fact in several instances only on or about the day of the hearings before the Committee and the Commissioner. There is no doubt in the Commissioner's mind that the Respondent was guilty of the failure to faithfully and honestly discharge his professional and legal duty to promptly report, account for and remit the monies collected by him for the account of his clients. Furthermore, he procrastinated an undue length of time in accounting to his fellow attorney for her share of the

attorneys' fees due her in the Booth case. As a matter of fact, approximately 15 months elapsed from April 24, 1969, the date upon which he deposited the sum of $72,500.00 in his bank account and July 14, 1970, the date when he remitted the final $10,000.00 to his co-attorney, in said case. His actions in this regard are most reprehensible and his excuses for nonpayment, utterly invalid and baseless. Regardless of the ultimate payment of his client's share of the settlement of the Booth case and the ultimate payment of his fellow attorney's portion of attorneys' fees, Respondent can not be excused or pardoned for the commingling of the proceeds of said substantial settlement with his own personal funds and the conversion thereof to his own personal use. It is recalled that of the $72,500.00 deposited in his account on April 24, 1969, only $23,664.51 remained in said account on November 19, 1969, which was prior to the repayment by him of the balance due his client ($40,833.33) and the balance due his fellow attorney of approximately $12,000.00. In other words on said date, namely, November 19, 1969, his account was short $29,168.82.

The Commissioner also notes that the Respondent deliberately and intentionally misrepresented the facts to the Committee when he was asked "Mr. Jacques, did at all times between April and December, was there at least $72,500.00 belonging to the Booth case less and except the amount you paid directly to Mrs. Booth?" Answer: "Yes, sir. Yes, sir." (Tr. hearing July 13, 1970, Page 86).

At a later date at the Committee hearing of July 27, 1970, Respondent admitted that he lied to the Committee explaining that he was "scared and frightened and panicked" (Tr. hearing July 27, 1970, Page 30 and 31).

The Commissioner considers the Respondent's actions in regard to the specifications brought against him and the other 37 complaints received by the Committee which were not identified, constituted a pattern of unethical and unprofessional conduct detrimental to the integrity of the legal profession. Therefore, he should be properly disciplined for his malpractice. Recognizing that the purpose of disbarment is not necessarily punishment but protection of the Courts and the public, the Commissioner is of the opinion that a prolonged suspension of the practice of law rather than the severe penalty of disbarment should be sufficient to accomplish that purpose and impress upon the Respondent his duty as a lawyer and the necessity of maintaining the integrity of the Bar.

CONCLUSION

Accordingly, it is the recommendation of the Commissioner that Charles G. Jacques, Jr., be suspended from the practice of law in the State of Louisiana for a period of five years from the date of a final decree in this matter.

Respectfully submitted

Albert J. Flettrich

ALBERT J. FLETTRICH, COMMISSIONER

SEPTEMBER 15, 1971.

SUPREME COURT OF LOUISIANA
A TRUE COPY
MAR 9 1972
Charles Peyronnin
DEPUTY CLERK